



MUNICIPAL COURTS MANUAL

**Rex Barton, Police Management Consultant
Melissa Ashburn, Legal Consultant**

April 2007



MTAS

**Municipal Technical
Advisory Service**

*In cooperation with the
Tennessee Municipal League*



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The Municipal Technical Advisory Service (MTAS) was created in 1949 by the state legislature to enhance the quality of government in Tennessee municipalities. An agency of the University of Tennessee Institute for Public Service, MTAS works in cooperation with the Tennessee Municipal League and affiliated organizations to assist municipal officials.

By sharing information, responding to client requests, and anticipating the ever-changing municipal government environment, MTAS promotes better local government and helps cities develop and sustain effective management and leadership.

MTAS offers assistance in areas such as accounting and finance, administration and personnel, fire, public works,

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FOREWORD

This guide was developed for municipal courts with the authority to enforce municipal ordinances. Some cities in Tennessee exercise concurrent general sessions court criminal jurisdiction. That is, they have the same authority as a state general sessions court and can hear cases involving state law violations as well as municipal ordinance violations. This guide will not attempt to address the procedures or requirements of courts with concurrent general sessions jurisdiction.



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ORDINANCES

DEFINITION

Any city ordinance passed by the local governing body is binding upon the community, but it is not a “law” in the legal sense. Municipal courts have long been considered “civil” courts rather than “criminal” courts. Unless a municipal court has concurrent general sessions criminal jurisdiction, only ordinance violations can be heard in municipal court.

Municipalities are authorized to adopt ordinances that mirror, substantially duplicate, or reference certain state laws for offenses that are Class C misdemeanors. The penalty for violating the ordinance cannot exceed \$50 with no imprisonment. Many cities have older ordinances in their codes that cannot be enforced, as the state offenses mirrored are not Class C misdemeanors.

Cities having a population of more than 150,000 may also adopt state laws for driving without a valid driver’s license, reckless driving, and adult underage purchasing or possession of alcoholic beverages. Smaller cities may no longer enforce ordinances adopting such offenses, as they are Class A and B misdemeanors under state law.

Mirroring a state law means that the ordinance reads exactly the same as the state law, and “substantially duplicating” means that the ordinance contains the same general language or intent. Adopting a state statute by reference allows the city to pass an ordinance adopting a specific state statute by referencing the “citation” number of the statute. While the full content of the state

statute would be in the ordinance, any future changes in the state law would automatically be included in the ordinance.

MTAS recommends that cities specifically name the violation being adopted by reference. While a city could pass an ordinance that adopts a statute by mentioning the statute citation, it is much clearer to cite the statute and the name of the offense. For instance, the ordinance could cite the state statute number for the financial responsibility law, but MTAS recommends the adopting ordinance also include the name “Financial Responsibility Law.”

PENALTIES

The constitution of the state of Tennessee provides that no fine shall exceed \$50 unless it is assessed by a jury. Municipal courts do not have statutory authority to hold jury trials. The Tennessee Supreme Court has ruled that the constitutional limitation on fines applies to penalties for municipal ordinance violations that are punitive in nature, rather than remedial. *City of Chattanooga v. Davis and Barrett v. Metropolitan Government of Nashville and Davidson County*, 54 S.W.3d 248 (Tenn. 2001). In the *Davis* opinion, the Court describes briefly the requirements that must be met in order to qualify a fine as remedial. These requirements include providing a detailed statement of expenses incurred by the city due to the individual offense cited. The Court admits that it is difficult for cities to make the distinction between remedial and punitive fines. It has been recommended that all penalties for municipal ordinance violations be limited to \$50, pending further direction from the courts.



A violation of a municipal ordinance in and of itself cannot be punished by incarceration, since penalties for violations of municipal ordinances are civil in nature. *Bristol v. Burrow*, 73 Tenn. 128 (1880); *Deitch v. Chattanooga*, 195 Tenn. 245, 258 S.W.2d 776 (1953); *Memphis v. Smthye*, 104 Tenn. 702, 58 S.W. 215 (1900); *Guidi v. Memphis*, 196 Tenn 13, 263 S.W.2d 532 (1953); *City of Chattanooga v. Myers*, 787 S.W.2d 921, 922 (Tenn. 1990).

CONDUCTING COURT OPENING THE COURT

Each judge may establish rules of conduct for his or her court, subject to the rights of any defendant appearing there. The judge may direct that his court be opened formally by a bailiff or other person. The opening may take several forms, but, in essence, it is simply a statement that the court is in session and will proceed with the business before it. The judge may elect to “open” court himself without a bailiff or police officer.

Most city courts are somewhat less formal than their criminal court counterparts. The city court judge determines just how formal or informal the court will be. It should be noted that citizens appearing before the city court have an expectation of and deserve a professional atmosphere.

Neither the Tennessee Rules of Civil Procedure nor Tennessee Rules of Criminal Procedure apply in municipal court. Municipal courts may adopt portions of the Rules of Civil Procedure but may not adopt Rules of Criminal Procedure as municipal courts are considered civil in nature. Most of the Rules of Civil Procedure cannot apply to municipal court due to the lack of paperwork maintained in case files. For instance, clerks do not have the capability of maintaining case files with written discovery requests and motions as provided for in the Rules of Civil Procedure.

OATH OR AFFIRMATION

Witnesses may be sworn as a group before each case is heard, or they may be sworn separately when they are called to testify. Oath forms vary in different courts. The form of the oath used by many courts is

Do you solemnly swear or affirm that the testimony you are about to give in this trial is the whole truth and nothing but the truth?

Occasionally, a witness may decline to take an oath or “swear” due to the person’s religious convictions. Such people may affirm that they will speak the truth.

CALLING FOR THE RULE

The judge shall, on his or her own motion, or at the request of either party or their attorneys, separate all witnesses. This sequestration of witnesses, commonly referred to as “calling for the rule,” is a requirement that all witnesses except the prosecutor and the defendant leave the courtroom and wait outside for their turn to testify. *Rule 615, Tennessee Rules of Evidence*. This rule prevents witnesses from consulting with one another or being influenced by the testimony of others.

PLEA OF THE ACCUSED

After the judge notifies the defendant of the charge against him or her (speeding, allowing a dog to run at large, failure to stop at stop sign, etc.), the defendant must enter a plea. Usually, this is merely an oral denial of the charge. At this time the defendant may indicate to the court the facts he or she will be relying upon for his defense.

ACCUSED’S RIGHTS AS WITNESS

The accused may testify and admit, explain, or deny any allegation made against him or her by the prosecution. However, the defendant does not have to testify, and failure to testify shall not be used against her, based on the rights guaranteed by the Fifth Amendment to the United States Constitution.



EXAMINATION OF WITNESSES

The complainant (police officer or private citizen) usually is the first to testify. His complaint, stated to the court under oath, is known as direct or original testimony. Immediately after the conclusion of direct testimony, the other side must be allowed to question or “cross examine” the witness. All prosecution witnesses testify and may be cross examined before the defense presents its witnesses. Each defense witness then offers direct or original testimony. At the conclusion of each defense witness’s direct testimony, the prosecution has the opportunity to cross examine.

Direct Testimony

When either side is represented by counsel, leading questions—those that suggest the desired answer—usually can be prohibited if objected to by the other side.

Cross Examination

Neither side is obligated to cross examine any witness. Leading questions may be used in cross examination without restriction. Cross examination extends to all matters related to the case and is not restricted only to matters brought out by direct examination.

DIRECTED VERDICT

At the conclusion of testimony for the prosecution, the judge may dismiss the case without further testimony if he or she is of the opinion that the prosecutor has failed to create a presumption of guilt. *Rule 50, Tennessee Rules of Civil Procedure.*

ARGUMENT OF COUNSEL

In cases where the parties are represented by counsel, the attorneys on both sides may make an argument to the court, after all evidence is presented, of conclusions drawn from the evidence that are favorable to their clients. Neither side is compelled to make such an argument. The prosecutor has the right to make her argument first, followed by the defense. Neither attorney is

a witness, and any representation of fact made during arguments must not be considered fact unless supported by evidence already introduced to the court. The judge may consider arguments based on facts submitted into evidence, applicable statutory law, and prevailing case law.

FINAL DECISION OF THE COURT

After all evidence has been presented, the trial judge must render a decision for or against the accused. In reaching the decision, the judge must weigh all properly introduced evidence presented to the court. To render a decision against the accused for a municipal ordinance violation, the court must find that a *preponderance* of the evidence has been produced against the accused. Being civil in nature, municipal ordinance violations do not require evidence beyond any reasonable doubt, as do criminal cases.

“Preponderance of the evidence” can best be described in this way: At the start of the trial, the scales of justice are balanced. As each side introduces evidence, the scale is weighted to one side or the other. At the conclusion of the trial, if the weight of evidence has tipped the scales against the accused, even slightly, the court should enter a judgment against the accused. If the scales are still *balanced* or are tipped in favor of the accused, the court should enter a judgment for the accused.

RESULTS OF FINAL DECISION

When the court finds against the accused, the court may assess any fine that conforms to the state constitution, statutory law, and provisions of the charter and ordinances of the city. The accused may appeal a fine assessed for a city ordinance violation to the circuit court of the county in which the municipality is located. Any appeal must be made within 10 days of the final decision. At that time the accused must post an appeal bond with the city court clerk in the amount of \$250. T.C.A. § 16-18-307.



JUVENILE TRAFFIC OFFENDERS

Generally, all cases involving juveniles are reserved for the juvenile court, and city courts have no original jurisdiction over juveniles, including cases involving traffic violations. All juvenile traffic offenders must, therefore, be tried in juvenile court, absent a waiver by the judge. T.C.A. § 37 1 103. The judge of a juvenile court for the county may waive jurisdiction over traffic violators who are 16 years of age or older. If the juvenile court judge waives jurisdiction, the city court can try those juvenile traffic cases. T.C.A. § 37 1 146(c).

If the court finds the juvenile to be guilty of a traffic offense, the court may make one or any combination of the following decisions:

1. Suspend the juvenile's driver's license;
2. Limit the juvenile's driving privileges;
3. Order the juvenile to attend traffic school or to receive driving instructions; and/or
4. Impose a fine of not more than \$50.
T.C.A. § 37 1 146(b).

LITIGATION TAX

State law mandates that all courts collect a "litigation tax" on all cases that are litigated. Litigation tax is not an item of court cost. The state has determined, for the purposes of imposing a litigation tax, that a case is litigated when the defendant is found guilty, either by a guilty plea or after a hearing. The state mandated litigation tax currently is \$13.75. T.C.A. §16-18-305(a). The litigation tax must be submitted to the Tennessee Department of Revenue.

The litigation tax should be collected when:

1. The defendant pleads not guilty but subsequently is found guilty;
2. The defendant comes to court and pleads guilty; or
3. The defendant submits to fine by entering a guilty plea by mail.

The litigation tax should not be collected when:

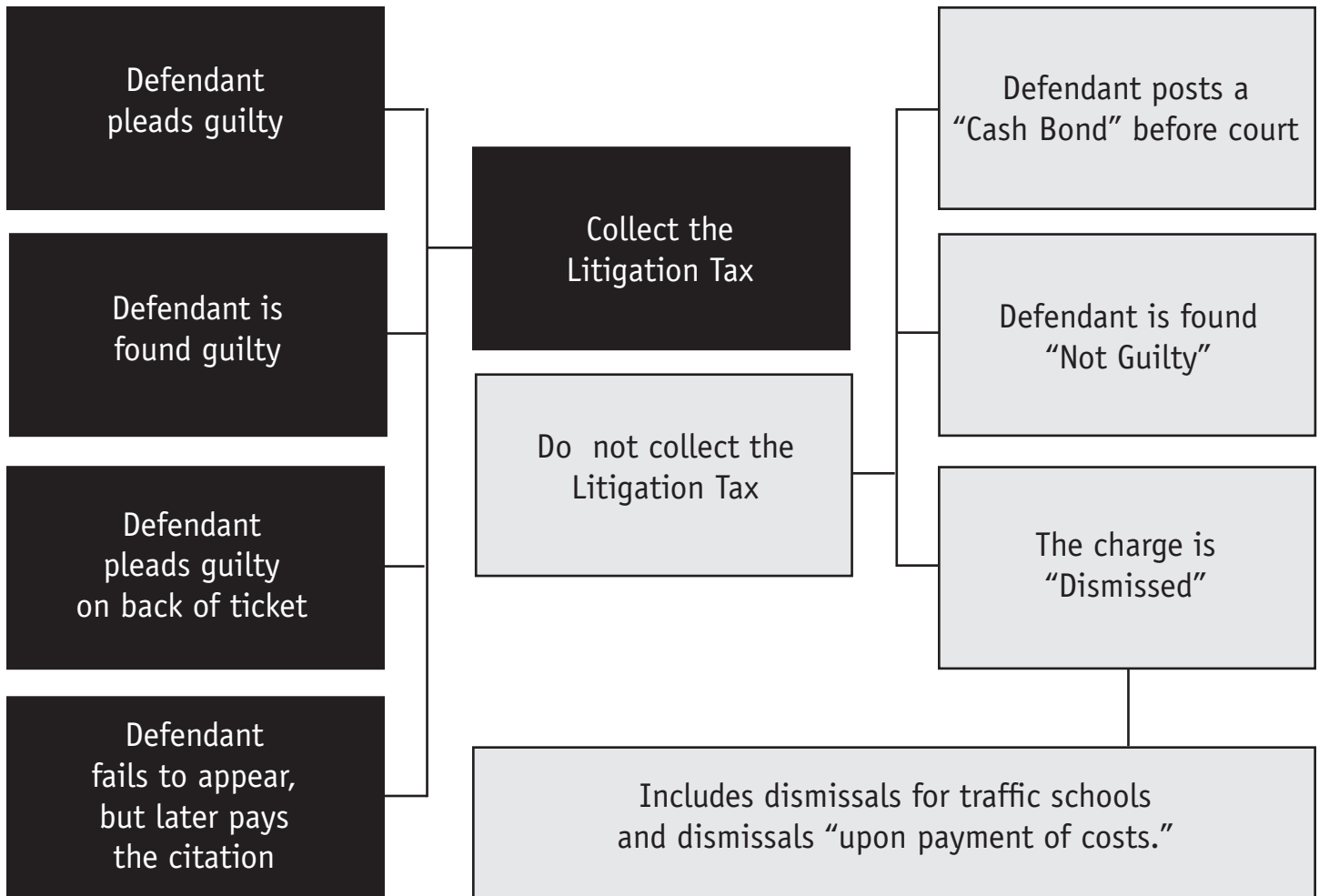
1. The defendant is found not guilty after a hearing;
2. The case is dismissed, for whatever reason.
Note: *A defendant may be offered an opportunity to have the charge dismissed after successful completion of a driver improvement course. If the case ultimately is dismissed, no litigation tax is to be collected, even if the dismissal is contingent on paying court costs;*
3. The defendant submits a "cash bond," usually equal to the court costs and fine, *without pleading guilty*. This can be by mail or by payment in person. **Note:** *The state Uniform Citation form used by many cities contains space on the back of the violator's copy of the citation for the violator to sign a guilty plea. The violator can then submit the citation copy and the total fine and court costs to the court before the court date. The state attorney general and the Tennessee Department of Revenue have opined that this constitutes a "guilty plea," and the litigation tax must be collected.*

A defendant may pay the fine and court costs prior to court without pleading guilty; this is known as "posting a cash bond" for the offense. If the defendant does not appear in court, the cash bond is forfeited. Generally, pleading guilty on the back of a copy of the citation and posting a cash bond accomplish the same thing, but the litigation tax must be collected when the defendant *pleads* guilty.

Municipalities are authorized to impose local litigation taxes that do not exceed the state amount of \$13.75. The purpose of a local litigation tax is revenue enhancement. As stated above, litigation tax may be collected only if the charge is litigated and the defendant is found guilty. Court costs, however, may be collected without litigation. As a practical matter, it is recommended that if



a municipal court wishes to increase revenues, such efforts be focused on increasing court costs as opposed to imposing a local litigation tax, which will create further accounting duties for bookkeeping personnel.



LITIGATION TAX ON PARKING VIOLATIONS

The Municipal Court Reform Act of 2004 created a litigation tax on parking violations, but the application of the tax is somewhat different from other violations. The court must collect a \$1 litigation tax for every violation of any municipal law or ordinance governing the use of public parking space even if the offender does not appear in court. This \$1 litigation tax is the only litigation tax to be collected on parking violations. T.C.A § 16-18-305(b).

COURT ACTION REPORTS

All courts, including municipal courts, are *required* to submit a Court Action Report to the Tennessee Department of Safety. (The report was formerly called the Court Abstract.) This report, along with accident reports, creates a driver's history file at the Department of Safety. Using this information, the state can identify drivers who habitually violate traffic laws or have several traffic accidents. Drivers often receive traffic citations in different jurisdictions, and, without a central repository for



traffic violation data and traffic accident data, it would difficult or impossible to identify poor drivers.

Drivers are assigned “points” for each violation. Higher point values are assigned for more serious offenses. When a driver accumulates a certain number of points in a given period of time, he or she will receive a warning letter from the Tennessee Department of Safety. The driver may be required to complete a driver improvement program to avoid losing driving privileges. In extreme cases, when a driver continues to accumulate points because of violations or at fault accidents, the driver may lose driving privileges.

The Court Action Report must be filed within 30 days of *final* adjudication of the case. The report is to be submitted for any finding of guilt or forfeiture. It does not have to be submitted when the case is dismissed or the offender is found “not guilty.”

Court Action Report forms are provided at no charge to local municipal courts by the Department of Safety. These forms also are used to report violators who fail to appear in court or to satisfy their citations prior to court. Orders for Court Action Reports should be faxed the Central Stores at the Department of Safety. At the time of this publication the fax number is (615) 350-3078. The order must include the **agency name, street address, and phone number of the court.**

Municipal court clerks also may use a Court Action Report form on the back of one of the copies of the state Uniform Citation form. Using the Court Action Report that is part of the Uniform Citation eliminates the need to write or type all of the driver’s biographical information, address, and the specific traffic violation information on a separate form. All of that information is filled out on the front of the citation issued by the police officer, eliminating the need for duplicate data entry.

FAILURE TO APPEAR IN COURT

Every court experiences the problem of defendants who fail to appear in court or satisfy a citation prior to court. Traffic violators who fail to appear are fairly easy to deal with, but other ordinance violators are more difficult.

FAILURE TO APPEAR FOR A TRAFFIC VIOLATION

The Tennessee Department of Safety will suspend the driving privileges of violators who fail to appear in court or satisfy a citation prior to court. Occasionally, a defendant will appear in court but neglect to pay fines or costs. This is called “failure to satisfy a citation,” and it should be treated the same as failing to appear in court. Tennessee has an interstate compact with most other states that deals with violators who fail to satisfy citations they receive in a state other than the one in which they live. If an out of state resident receives a traffic citation while traveling through Tennessee and fails to satisfy that citation, the Tennessee Department of Safety will notify the other state, and the other state will suspend the driver’s driving privileges. The same holds true for Tennessee residents who fail to satisfy a citation received in another state.

Notifying the Department of Safety

When a defendant fails to appear in court or satisfy a traffic citation before the court date, the clerk should notify the Department of Safety by completing a Court Action Report. The disposition of the traffic case is then marked “Failed to Appear.”

The Department of Safety will first try to notify the defendant by mail that driving privileges will be suspended if the citation is not satisfied. If the Department of Safety does not then receive notification that the citation has been satisfied, the defendant’s driving privileges will be suspended.

The municipal court is not required to send a warning letter to the violator. Some cities choose



to do so as a courtesy to violators who may have merely forgotten about the citation and the court date.

The Department of Safety will not allow official correspondence to be forwarded. Licensed drivers are required by law to notify the Department of Safety of any address change, and people who move without notifying the department of the change of address will not receive the warning letter or the subsequent notification of suspension. The Department of Safety uses only the official address on the driver's license, not any corrected address the violator may have given the officer at the time the citation was issued.

Sending a warning letter to the person's corrected address prior to notifying the Department of Safety of a Failure to Appear may prompt the defendant to satisfy the citation. Again, this notification from the municipal court is not required.

The Court Action Report must be filed with the Department of Safety within six months of the original issuance of the citation. This can be problematic when the judge allows a defendant an extended period of time to pay his or her fines and cost, and the defendant ultimately does not pay. It is suggested that the court establish a maximum time frame for payments that ends before the six-month deadline for submission to the Department of Safety.

When the Defendant Satisfies the Citation

The Court Action Report contains four copies. The original copy is sent to the Department of Safety as notification that the defendant failed to appear. When the defendant does satisfy the citation, an additional entry is made on the remaining copies indicating that the citation has been satisfied. The second copy of the form is sent to the Department of Safety, the third copy is given to the defendant, and the last copy is filed with the original citation.

FAILURE TO APPEAR FOR OTHER ORDINANCE VIOLATIONS

Failure to appear in court may be treated as contempt of court. Under Tennessee law, a municipal court has the power, as do other courts, to punish for contempt of court. The Municipal Court Reform Act provides that contempt of court is punishable by a fine in an amount not exceeding \$50. T.C.A. § 16-18-306.

As stated earlier, municipal courts are civil in nature, and municipal court cases are somewhat like lawsuits. When a defendant fails to appear in court, whether or not the judge finds the defendant guilty of contempt, a judgment is entered against the defendant by default. The defendant may still appeal the default judgment to circuit court within 10 days by posting a bond in the amount of \$250. After 10 days, the defendant has no right to challenge the original charge. By failing to appear, he or she has essentially lost the case.

Cities may adopt ordinances making failure to appear a separate ordinance violation. If a city has such an ordinance, a new citation, which may be served by certified mail, is issued when the defendant fails to appear. The defendant is entitled to a hearing on the failure to appear charge before the \$50 fine is assessed. In those situations, the defendant has a separate citation pending in the court to which court costs and litigation taxes may attach.

COLLECTING DEBT

Cities may employ the same tools for collecting debt that any private sector organization may use to recover a civil debt. They include:

1. **Collection agency**—State law permits cities to enter into contracts with collection agencies, upon the passage of an ordinance by the governing body approving the contract. The city's bidding and purchasing procedures must be followed. T.C.A. §40-24-105.;



2. **Garnishment**—The city may take action through the general sessions court to garnish the wages of any debtor; or
3. The city may seek an injunction through the chancery court to compel a defendant to comply with a municipal court judgment. This avenue may be helpful when a defendant refuses to comply with a judgment requiring action, such as removing horses from a lot in the city, removing junk from a yard, or bringing a building up to code specifications. Some defendants refuse to comply with a municipal court judgment because there is no potential jail sentence. Failure to comply with a chancery court injunction can result in a high fine and/or jail time.

FINES AND COURT COSTS

FINES

As discussed earlier in this manual, the Tennessee Constitution provides that no fine shall exceed \$50 unless it is assessed by a jury. Municipal courts do not have statutory authority to hold jury trials. The Tennessee Supreme Court has ruled that the constitutional limitation on fines applies to penalties for municipal ordinance violations, which are punitive in nature rather than remedial. *City of Chattanooga v. Davis and Barrett v. Metropolitan Government of Nashville and Davidson County*, 54 S.W.3d 248 (Tenn. 2001). It has been recommended that all penalties for municipal ordinance violations be limited to \$50 pending further direction from the courts.

The schedule of fines can be established by the governing body, but most cities leave the amount of the fine, within the limits described above, to the discretion of the city judge.

COURT COSTS

The Municipal Court Reform Act of 2004 provides the authority for municipalities to set court costs. Court costs are to be set by municipal ordinance. T.C.A. § 16-18-304(a). The law does not specify an

amount, leaving the amount to the discretion of the city. However, the city should ensure that there is a rational basis for the court cost.

Court costs are designed to offset the cost of maintaining the court. Even when a violator pays before court and does not appear for a court hearing, there still are costs associated with maintaining the court. It is suggested that the city charge uniform court costs for all charges, regardless of whether the defendant appears in court or pays before court. Otherwise, clerks should be prepared to defend any amounts that are greater by proving that the statutory amounts are insufficient to pay for reasonable costs of operation.

COLLECTING COURT FINES AND COSTS

It is the duty of the city judge to collect fines and costs imposed by the city court. Fines and costs assessed in municipal courts are collected in the same manner as civil judgments. All judgments for money and costs issued by any court of this state may be enforced by execution. T.C.A. § 6 54 303; T.C.A. § 26 1 103.

If a defendant fails to pay fines or costs ordered by the court, the city may commence an action in general sessions court to garnish the defendant's wages or personal property, which is referred to as an "action for execution." T.C.A. § 26 2 201 *et seq.* In such execution or garnishment actions, police officers of the municipality may serve notice on defendants anywhere in the county in which the city is located. T.C.A. § 6 54 303(b).

An action to garnish wages must be filed in a court with jurisdiction over the defendant's employer, which generally means it must be filed in the county in which the defendant is employed. Garnishment is a very effective method for collecting fines, as the payments are made by the employer through the court clerk, and the costs associated with the garnishment action are added to the judgment being collected.



If the defendant is a property owner, the city may file suit in chancery court seeking to attach a lien against the defendant's property. Liens may not be attached against property without a state court order unless specific statutory authority exists. No such authority exists for municipal court fines and costs, so the city must go to the expense of a lawsuit to attach such liens. Liens are generally collected only if the property sells.

LITIGATION TAX

The state mandated litigation tax is covered elsewhere in this manual. A city may charge a city litigation tax on cases litigated in city court. The city keeps the city litigation tax, but the state litigation tax must be forwarded to the Tennessee Department of Revenue. The local litigation tax can be no more than the state litigation tax, which currently is \$13.75. T.C.A. § 67 4 602. Both the state and local litigation taxes are separate from court costs.

DOCKET BOOK

Many court clerks use the term "docket" to refer to a variety of things. For the purposes of this manual, the docket will refer to the permanent record of all cases brought before the court. In most cities the docket will be a large bound book; in others it may be computerized.

MAINTAINING THE DOCKET

The court may use bound docket books purchased from a vendor, and the book may have preprinted docket numbers for each entry. Docket books without numbers also can be purchased. Prenumbered docket books allow the court to order a new docket book with the first number beginning sequentially with the last number of the previous docket book.

Bound docket books require an alphabetical index of all defendants entered in the docket book.

Court clerks are required to keep a record of all judgments (dispositions) with each case numbered in sequential order (docket number).

The disposition includes:

1. The date of the trial and any continuances;
2. The full name of the defendant;
3. The fine amount;
4. The court cost amount;
5. The name of the officer and/or prosecutor;
6. The disposition (plead guilty, found guilty, dismissed, etc.);
7. The citation number or warrant number if different from the docket number;
8. The receipt number of any payment; and
9. The actual offense (speeding, allowing animals to run at large, running a stop sign, etc.).

***Note:** These docket requirements are compiled from T.C.A. § 16 15 303, T.C.A. § 18 1 105, and regulations promulgated by the Office of Municipal Audit.*

DOCKET BOOKS AND THE AUDIT PROCESS

The docket book is an integral part of the municipal court audit process. The information included in the docket should contain the original ticket number or warrant number and the receipt number for payments. The receipt for any payments should contain the ticket number or warrant number and the docket number. The original ticket or warrant should contain the docket number and the receipt number. This cross referencing of numbers helps ensure the integrity of the municipal court process. Internal Control and Compliance Manual, Office of the Comptroller; Title 3, Chapter 5, Section 4, Section 7 and Section 8.

COMPUTERIZED DOCKETS

Any information required to be kept as a public record by the court clerk may be maintained on a computer or computer storage media instead of in bound docket books provided the following standards are met:



1. The information must be available for public inspection unless it is confidential according to law;
2. Due care is taken to maintain the information as a public record during the time required by law for retention (dockets must be retained forever);
3. All data stored within the computer system shall be copied to computer storage media daily (computer disks, backup tapes, etc.), and newly created computer storage media more than one week old shall be stored at a location other than at the building where the original is maintained; and
4. The clerk can provide a paper copy of the information when needed or when requested by a member of the public.

Computer programs allow for searches based on names, eliminating the need for alphabetical indexing of names.

SOFTWARE

Court dockets can be developed using “off the shelf” database management software or spreadsheets. Commercial software also is available that meets all state court docket mandates.

Commercial software packages also prepare the Court Action Reports, including “failure to appear” notices. Some issue receipts as violators pay their fines. Commercial software also may prepare monthly litigation tax reports, Department of Revenue Motor Vehicle Enforcement Reports, and Department of Safety Fines, Fees and Cost Reports.

FINANCIAL TRANSACTIONS OF THE COURT RECEIPTS

All cash transactions of the court must be recorded on prenumbered receipts. The receipts should produce at least two copies, with three copies being preferable. The violator should be given one receipt, one should be maintained by the recorder’s office,

and a third, if available, should be maintained by the court clerk.

The receipts should be prenumbered and should be used exclusively by the court. The docket number and the original ticket or warrant number (if different from the docket number) should be written on the receipt. If payment is made by check, the check number also should be written on the receipt.

The receipt number should be recorded in the docket book for each case. This action is another part of the audit process to ensure that all city court cases are properly disposed of and all financial transactions are accounted for.

CASH TRANSACTION LOG

Most municipal courts are separate from the city recorder’s or finance director’s office. Daily cash transaction forms that include receipt numbers should be prepared to detail every cash transaction conducted by the court clerk. The cash transaction report should be turned in to the recorder or finance director with all cash and receipts. The court clerk and the recorder or finance clerk should count the cash in each other’s presence and sign the cash transaction form. This process helps ensure the integrity of financial transactions of the court and the city government. Internal Control and Compliance Manual, Office of the Comptroller; Title 3, Chapter 1.

TRAFFIC CITATIONS AND THE AUDIT PROCESS

The city is responsible for ensuring that all unissued traffic ticket citations are accounted for, and some person must have physical control of them. That person may be the city court clerk or someone in the police department, depending on the needs of the individual city. Each officer should be required to sign for each book of prenumbered traffic ticket citations issued by the designated person.



Upon completion of all court processes relating to a case, the original tickets should be filed in sequential ticket number order. Many court clerks file the tickets in alphabetical order, but the proper final filing style should be numerical. If the court desires an alphabetical filing, copies should be used. The numerical filing system provides another audit method to ensure that all tickets are accounted for. When there are missing ticket numbers, the missing tickets can be in only a few places:

- Unassigned ticket books;
- Unwritten tickets in an officer's ticket book; or
- Pending court case (including failure to appear).

As long as ticket books are signed for as they are issued, as is required, any unwritten tickets can be accounted for quickly. Pending court cases are recorded in the docket and also can be accounted for quickly. Internal Control and Compliance Manual, Office of the Comptroller; Title 3, Chapter 5.

CITATION BOOK LOG

1. Citation #s
2. Officer's name

RECEIPT BOOK

1. Prenumbered
2. Multicopy
3. Defendant's name
4. Charge
- 5. Citation #**
- 6. Docket #**

DOCKET BOOK

1. Trial date and continuances
2. Defendant's name
3. Fine amount
4. Court cost amount
5. Name of officer/affiant
6. Disposition
- 7. Citation/Warrant #**
- 8. Receipt #**
9. Offense (speeding, etc.)

CITATION

1. Prenumbered
- 2. Docket #**
- 3. Citation #**
4. After adjudication,
filed in ticket # order



MAYOR OR RECORDER COURTS

With the passage of the Municipal Court Reform Act of 2004, no city employee or officer can serve as municipal judge. T.C.A. § 16-18-307. Employees or officers serving as municipal judge at the time the act became effective (March 1, 2005) may continue to serve as judge. However, if such official or employee either discontinues service as a municipal official or employee or discontinues service as a judge, the exemption will no longer apply.

This law supersedes any charter provision making the mayor or city recorder the judge. The law also prevents the city attorney from serving as the municipal judge.

RULES OF THE ROAD

Many cities have an ordinance in their city codes that adopts misdemeanors of the state of Tennessee. The cities then rely on that ordinance to try cases involving violations of state traffic laws in the municipal court. T.C.A. § 16-18-302 specifically authorizes cities to adopt state criminal offenses that are Class C misdemeanors by reference, mirroring or substantially duplicating the state statutes. This means that after passing a single ordinance adopting the Rules of the Road (T.C.A. Title 55, Chapter 8) and certain other traffic violations (T.C.A. Title 55, Chapter 10), the city can try any of the individual statutes as though they were city ordinances without having to adopt individual ordinances for each of those traffic laws.

In the Supreme Court case mentioned earlier in which the Court determined that the \$50 limitation on fines imposed without a jury applies to violations of municipal ordinances, the Court discussed ordinances adopting traffic offenses from the state code by reference as discussed above. Although the Court did not rule that such ordinances are unconstitutional, it did express a concern that municipalities adopting the statutes by reference

and enforcing those regulations could infringe upon the constitutional and statutory authority of the local district attorney general to make decisions regarding the prosecution of state regulations. *City of Chattanooga v. Davis and Barrett v. Metropolitan Government of Nashville and Davidson County*, 54 S.W.3d 248 (Tenn. 2001).

It is therefore recommended that municipalities that have adopted such regulations by reference to the state T.C.A. citations, or those that desire to do so, request a letter from their district attorney general stating that he or she is in agreement that the city may undertake prosecution of those charges. Otherwise, cities should craft their own traffic violation ordinances without relying on the specific language contained in the state code.

SEATBELTS AND CHILD RESTRAINT VIOLATIONS

All fines collected for violations of seatbelt and child restraint violations must be forwarded to the state Department of Safety. The amount of the fine varies according to the violation, and the city cannot collect court costs for some violations.

The Child Restraint Law (or city ordinance) applies to all persons under the age of 16. It provides that

- The citation is to be given to the guardian, if present, or the driver;
- The maximum fine is \$50;
- If the child was supposed to be in a child restraint seat or booster seat, the court may collect court costs; and
- If the child (under 16 years of age) was supposed to be restrained by a seatbelt, the court cannot collect court costs.

The seatbelt law (or city ordinance) applies to all persons 16 years of age or older and provides that

- The violator receives the citation;
- If the violator is age 16 or 17, the fine is \$20.



(Note: The county juvenile judge must waive jurisdiction for juvenile traffic offenders for the city court to hear seatbelt offenses for this age group);

- If the violator is 18 years of age or older, the fine is \$10 for the first offense and \$20 for subsequent offenses; and
- The court cannot collect court costs for seatbelt violations.



Appendix A: SAMPLE ORDINANCE FOR CITY JUDGE

(For cities with current Mayor or Recorder Court)

ORDINANCE NO. _____

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF _____, TENNESSEE, THAT:

Section 1. Pursuant to T.C.A. § 16 18-101, *et seq.*

- (a) The city judge for the City of _____ shall be _____ (_____) years of age, licensed in the state of Tennessee to practice law, *and shall be a resident of _____ (city/county). In the event he or she removes his or her residency from _____ (city/county) he or she shall automatically vacate his or her office. (Note: Text in italics is optional.)*
- (b) The city judge shall be appointed by, and serve at the will and pleasure of, the governing body.
- (c) Vacancies in the office of city judge shall be filled by the governing body.
- (d) The compensation of the city judge shall be \$ _____ per month.
- (e) During the absence or disability of the city judge, the governing body may appoint a city judge pro tem to serve until the city judge returns to his duties. The judge pro tem shall have all the qualifications required of the city judge under this ordinance, and shall have all the authorities and powers of the city judge.

Section 2. Consistent with *Town of South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992), the city judge is an appointed judge and shall have jurisdiction only over violations of municipal ordinances.

Section 3. This ordinance shall take effect immediately upon its passage upon final reading by the governing body, the public welfare requiring.

Passed first reading: _____

Passed second reading: _____

Passed third reading: _____

Signed: _____

Attest: _____

Approved as to form: _____

City Attorney



**Appendix B: SAMPLE ORDINANCE FOR THE CITY OF _____
 TO ADOPT BY REFERENCE STATE TRAFFIC OFFENSES
 AND RULES OF THE ROAD
 ORDINANCE 06-_____**

AN ORDINANCE OF THE CITY OF _____, TENNESSEE, REPLACING MUNICIPAL CODE § _____ AND ADOPTING BY REFERENCE STATE TRAFFIC OFFENSES AND RULES OF THE ROAD.

WHEREAS, the Board of Mayor and Aldermen desires to adopt by reference state traffic offenses and rules of the road; and

WHEREAS, the Tennessee General Assembly amended the laws pertaining to adoption of state laws by municipalities by reference, by changing the statute under which such adoption is made and by further specifying that only Class C misdemeanors may be adopted by municipalities and enforced as municipal ordinance violations;

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen, that

Section 1. Municipal Code § _____, "Rules of the Road," is repealed in its entirety.

Section 2. The following provision is added as the new § _____ of the Municipal Code of _____:

15-126. Adoption of state traffic statutes. By the authority granted under *Tennessee Code Annotated* § 16-18-302, the City of _____ adopts by reference as if fully set forth in this section, the "Rules of the Road," as codified in *Tennessee Code Annotated* §§ 55-8-101 through 55-8-131, and §§ 55-8-133 through 55-8-180. Additionally, the City of _____ adopts *Tennessee Code Annotated* §§ 55-8-181 through 55-8-193, §§ 55-9-601 through 55-9-606, § 55-12-139 and § 55-21-108 by reference as if fully set forth in this section.

Section 3. This ordinance shall take effect upon its final reading, the public welfare requiring it.

FIRST READING: _____

SECOND READING: _____

 Mayor

ATTEST:

 City Recorder

Approved as to form: _____
 City Attorney



Appendix C: SAMPLE FINANCIAL RESPONSIBILITY (INSURANCE) LAW ORDINANCE (If Adopted Separate From Other Traffic Violations)

ORDINANCE NO. _____

AN ORDINANCE TO MAKE A VIOLATION OF TENNESSEE CODE ANNOTATED § 55 12 139 A MUNICIPAL ORDINANCE VIOLATION

WHEREAS, under the authority of T.C.A. § 16-18-302, municipalities are authorized to make violations of T.C.A. § 55 12 139 municipal ordinance violations,

NOW THEREFORE, BE IT ENACTED BY THE GOVERNING BODY OF THE CITY OF _____,
THAT: (**Note:** Use whatever introductory language is required by the city's charter and by custom.)

Section 1. Compliance with financial responsibility law required.

- (1) Every vehicle operated within the corporate limits must be in compliance with the financial responsibility law.
- (2) At the time the driver of a motor vehicle is charged with any moving violation under Title 55, Chapters 8 and 10, Parts 1-5, Chapter 50; any provision in this title of this municipal code; or at the time of an accident for which notice is required under T.C.A. § 55 10 106, the officer shall request evidence of financial responsibility as required by this section. In case of an accident for which notice is required under T.C.A. § 55 10 106, the officer shall request such evidence from all drivers involved in the accident, without regard to apparent or actual fault.
- (3) For the purposes of this section, "financial responsibility" means:
 - (a) Documentation, such as the declaration page of an insurance policy, an insurance binder, or an insurance card from an insurance company authorized to do business in Tennessee, stating that a policy of insurance meeting the requirements of the Tennessee Financial Responsibility Law of 1977, compiled in T.C.A. Chapter 12, Title 55, has been issued;
 - (b) A certificate, valid for one (1) year, issued by the commissioner of safety, stating that a cash deposit or bond in the amount required by the Tennessee Financial Responsibility Law of 1977, compiled in T.C.A. Chapter 12, Title 55, has been paid or filed with the commissioner, or has qualified as a self insurer under T.C.A. § 55 12 111; or
 - (c) The motor vehicle being operated at the time of the violation was owned by a carrier subject to the jurisdiction of the Department of Safety or the Interstate Commerce Commission, or was owned by the United States, the state of Tennessee or any political subdivision thereof, and that such motor vehicle was being operated with the owner's consent.



Section 2. Civil Offense.

It is a civil offense to fail to provide evidence of financial responsibility pursuant to this ordinance. Any violation of this ordinance is punishable by a civil penalty of up to fifty dollars (\$50). The civil penalty prescribed by this ordinance shall be in addition to any other penalty prescribed by the laws of this state or by the city's municipal code of ordinances.

Section 3. Evidence of Compliance after Violation.

On or before the court date, the person charged with a violation of this ordinance may submit evidence of compliance with this ordinance in effect at the time of the violation. If the court is satisfied that compliance was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility may be dismissed.

Section 4. This ordinance shall take effect immediately upon adoption by the governing body upon final reading, the public welfare requiring.

Passed first reading: _____

Passed second reading: _____

Passed third reading: _____

Signed: _____
Mayor

Attest: _____
Recorder

Approved as to form: _____
City Attorney



Appendix D: CONTACTS FOR SUBMITTING REPORTS AND FINES AND FOR REQUESTING NEW FORMS

Court Action Reports (Abstracts):

Violations Evaluation Unit
Driver Control Section
Department of Safety
Nashville, TN 37249-5000

Litigation Tax Report Information:

Tennessee Department of Revenue
(615) 251-5157





MTAS

**Municipal Technical
Advisory Service**

*In cooperation with the
Tennessee Municipal League*

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The University does not discriminate on the basis of race, sex or disability in its education programs and activities pursuant to the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) of 1990.

Inquiries and charges of violation concerning Title VI, Title IX, Section 504, ADA or the Age Discrimination in Employment Act (ADEA) or any of the other above referenced policies should be directed to the Office of Equity and Diversity (OED), 1840 Melrose Avenue, Knoxville, TN 37996-3560, telephone (865) 974-2498 (V/TTY available) or 974-2440. Requests for accommodation of a disability should be directed to the ADA Coordinator at the UTK Office of Human Resources, 600 Henley Street, Knoxville, TN 37996-4125.

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