

Municipal Court Processes

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Municipal Court Processes

Reference Number: MTAS-97

(NOTE: Content in this section was formerly distributed as the "Municipal Courts Manual" publication.)

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.**

Definitions of Ordinance and Penalties

Reference Number: MTAS-302

Definition of Ordinance

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 and the municipal court cannot order 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.

Definition of Penalties

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 that are punitive in nature, rather than remedial as referenced in *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 as seen in *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); *Metro Government of Nashville & Davidson County v. Allen*, 529 S.W.2d 699 (Tenn. 1975); *City of Chattanooga v. Myers*, 787 S.W.2d 921, 922 (Tenn. 1990); *Mullins v. State*, 380 S.W.2d 201 (Tenn. S.Ct. 1964); and *Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn.S.Ct. 2001).

Fines

Reference Number: MTAS-316

The Tennessee Constitution provides that no fine shall exceed \$50 unless it is assessed by a jury. See, Article VI, Section 14, Constitution of the State of Tennessee. 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. See generally, T.C.A. § 16-18-302(a)(2).

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.

Conducting the Court

Reference Number: MTAS-303

Opening the Court

Each judge may establish rules of conduct for the court, subject to the rights of any defendant appearing there. The judge may direct that 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 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/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 as found in *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 (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 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 by the prosecution. However, the defendant does not have to testify, and failure to testify shall not be used against him, 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' 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/Dismissal

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. For guidance on directed verdicts and dismissals, review Tennessee Rules of Civil Procedure 41.02 and 50. As stated above, the Tennessee rules of court do not apply to municipal courts. The rules are a good source for general guidance, especially when due process and notice are at issue.

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 his 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 criminal cases do.

"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, excluding Sundays. 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.

Court Costs

Reference Number: MTAS-317

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).^[1]

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.

[1] One dollar (\$1.00) of the court costs shall be forwarded by the municipal court clerk to the state treasurer for deposit and shall be credited to the account for the administrative office of the courts (AOC) for the sole purpose of defraying the administrative director's expenses in providing training and continuing education courses for municipal court judges and municipal court clerks.

Sample Ordinance for Adding E-Citation Court Cost

Reference Number: MTAS-1977

(FOR USE BY CITIES THAT HAVE THE STANDARD MTAS MUNICIPAL CODE TITLE 3, CHAPTER 2 COURT ADMINISTRATION)

ORDINANCE NO. _____

AN ORDINANCE TO AMEND TITLE 3 OF THE MUNICIPAL CODE OF THE CITY/TOWN OF _____ TO ADOPT ELECTRONIC CITATION REGULATIONS AND FEES.

WHEREAS, Tennessee Code Annotated, Section 55-10-207 was amended by Public Chapter 750 (2014), authorizing electronic citations to be filed in court, along with a fee to recover costs associated with both written and electronic citations;

NOW, THEREFORE,

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

****Section 1.** The Municipal Code of the City/Town of _____ be amended by adding this new subsection to 3-20__ as follows:

3-20__ . Imposition of fines, penalties, and costs. () Electronic citation regulations and fees.

(a) As used in this section, "electronic citation" means a written citation or an electronic citation prepared by a law enforcement officer on paper or on an electronic data device with the intent the citation shall be filed, electronically or otherwise, with a court having jurisdiction over the alleged offense.

(b) Pursuant to and in accordance with state statutory requirements found in Tennessee Code Section 55-10-207(e), each court clerk shall charge and collect an electronic citation fee of five dollars (\$5.00) for each citation which results in a conviction.

[** For cities with no court costs section in title 3, replace Section 1 with the following language:]

Section 1. The Municipal Code of the City/Town of _____ be amended by adding this new section to title 3, chapter __:

3-20____. Electronic citation regulations and fees.

Section 2. Date of effect. This ordinance shall take effect from and after its final passage, the public welfare requiring it.

Section 3. Sunset provision. This Ordinance and its fee requirement shall terminate five (5) years from the date of adoption of this Ordinance and the city's Code shall be so annotated.

Passed 1st reading, _____, 20____.

Passed 2nd reading, _____, 20____.

Mayor

Recorder

Ref: <http://state.tn.us/sos/acts/108/pub/pc0750.pdf> [1]

Collecting Court Fines and Fees

Reference Number: MTAS-318

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.
2. Garnishment - The city may take action through the general sessions court to garnish the wages of any debtor.
3. Injunction-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.

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. See, T.C.A. §§6-54-303 and 26-1-103. If a defendant makes a partial payment, the funds should be applied in this order: 1) payment of litigation taxes; 2) once litigation taxes have been paid, then payment of costs; 3) then additional moneys shall be credited toward payment of the fine. T.C.A. § 40-24-105 (a).

The municipality may enact an ordinance to employ a collections agency where the fines and costs have not been collected within 60 days after they were due, and subject to the conditions set forth in T.C.A. § 40-24-105(e)(1)-(4). The authorizing ordinance shall include the requirement that the contract between the municipality and the collection agency be in writing. The collection agency may be paid an amount not exceeding 40 percent of the sums collected as consideration for collecting the fines and

costs. The written contract between the collection agency and the municipality shall include a provision specifying whether the agency may institute an action to collect fines and costs in a judicial proceeding.

The collection of unpaid parking tickets is governed separately by T.C.A. § 6-54-513. A municipality shall have no authority to forward to a collection agency unpaid parking tickets for collection without notifying the owner of record of the motor vehicle for which the parking ticket was issued. The notification shall be sent by mail to the owner of record the motor vehicle that such action will occur unless the owner pays the unpaid tickets within 30 days from the date the letter is mailed. The municipality shall also include in the notification a statement that, if the ticket is forwarded to a collection agency for collection, the agency may notify the credit bureau or credit agency of such fact, which could affect the owner's credit rating.

Alternatively, 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 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.

Juvenile Traffic Offenders

Reference Number: MTAS-304

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) and §16-18-302(d).

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.
5. Perform community service work in lieu of a fine. T.C.A. §37-1-146(b)

Note: Item 5 was added to T.C.A. §37-1-146(b) in 2016, per Public Chapter 600. City courts may not have authority to impose item 5.

Litigation Tax

Reference Number: MTAS-319

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 and § 16-18-305; See, T.C.A. § 67-4-604. Both the state and local litigation taxes are separate from court costs.

Litigation Taxes

Reference Number: MTAS-305

State law mandates that 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 in all cases in municipal court. 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:

- The defendant pleads not guilty but subsequently is found guilty;
- The defendant comes to court and pleads guilty; or
- The defendant pays a fine before court.

The litigation tax should not be collected when:

- The defendant is found not guilty after a hearing;
- 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;
- 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.

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, paying a fine and posting a cash bond accomplish the same thing, but the litigation tax must be collected when someone pays a fine.

Effective July 1, 2010, the Tennessee General Assembly mandated a "Cash Bond Forfeiture Fee," to be collected when a defendant pays before court, and the city treats the payment as a cash bond. The fee is \$13.75, the same as the litigation tax, but is reported to the department of revenue on a different form. The city is entitled to keep a five percent commission. T.C.A. §38-6-103(d)(1)(A)-(C).

If a city has been collecting the litigation tax for payments made before court, it has been treating those payments as though they were fines, regardless of what the judge or clerk wrote in the disposition. Those cities should continue to collect the litigation tax on payments made before court, but not the new "Cash Bond forfeiture Fee."

If a city has not been collecting the litigation tax for payments made before court, it has been treating those payments as "cash bond forfeitures," and the city should now collect the new "Cash Bond Forfeiture Fee."

A city should never collect the litigation tax and the cash bond forfeiture fee for the same charge.

Municipalities are authorized to impose local litigation taxes that do not exceed the state amount of \$13.75. See, T.C.A. §16-18-305(c), T.C.A. §67-4-602, and T.C.A. § 67-4-604. 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 imposing a local litigation tax as opposed to increasing court costs.

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).

Interest on Municipal Court Judgments

Reference Number: MTAS-1591

Tennessee Code Annotated § 47-14-121 sets forth how courts shall compute interest. The year is divided in half and potentially two different rates may apply, one rate from January 1 through June 30, and another rate from July 1 to December 31. The Legislature requires the AOC to publish the rates, as provided at <http://www.tncourts.gov/node/1232344> [2], on the Tennessee Judgment Interest Rates page. For judgments entered prior to 2012, the applicable interest rate is 10%.

How to calculate interest

- Compute the number of days that passed between the anniversary date of order and the date they pay. Do not count the first day of the judgment.
- Divide the number of days by 365 to get the rate amount for formula.
- Multiply by the official Tennessee Judgment Interest Rate.

Judgment Amount x Tennessee Judgment Interest Rate x Rate Amount [# of days divided by 365] = interest

Judgment Amount + interest= total amount owed by defendant

As of January 1, 2019, the rate is 7.45 percent.

(Note: simple Interest calculations may vary slightly depending on the number of decimal places used in the calculation. Also, interest rates may change, so always refer to the AOC website URL above. Interest is not compounded for purposes of post-judgment interest.)

MTAS has opined that this statute is self-executing and does not need an ordinance to effectuate collection of interest, in the same way that municipal courts are required to collect state litigation tax at the statutory rate of \$13.75.

Court Action Reports

Reference Number: MTAS-306

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 be 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 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. [1] For defendants with a commercial driver's license, the court action report must be submitted within five days of adjudication. [2] 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."

The clerk should submit the guilty disposition to the Department of Safety within 30 days. This reporting requirement still applies when the court allows additional time for the defendant to pay the fine and costs. If the defendant ultimately does not make payment, the clerk can modify the court action report to indicate that the defendant failed to satisfy the fine and costs.

All courts are encouraged to submit court action reports electronically. The Department of Safety has created an internet web program ("the portal" <https://courtreport.safety.tn.gov/> [3]) to allow court action reports to be filed directly to the Department, eliminating the requirement for paper forms. Some court software programs will allow the court action reports to be submitted electronically.

[1] See, T.C.A. § 55-10-306.

[2] See, T.C.A. § 55-50-409.

Failure to Appear in Court

Reference Number: MTAS-308

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 in Court for Traffic Violation

Reference Number: MTAS-310

Failure to Appear for a Traffic Violation

The Tennessee Department of Safety is authorized to suspend the driving privileges of violators who fail to appear in court or satisfy a citation. See, T.C.A. §55-50-502. 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.

Failure to Appear (FTA) is when a defendant did not appear for court at the designated time and date. Typically, the court will find the defendant guilty of the ordinance violation, by default, due to the failure to appear. The guilty conviction should be timely submitted on the court action report. The default judgment may be appealed to circuit court. The clerk should submit “Failure to Appear (FTA)” on the court action report. Any request for suspension must be submitted to the Department of Safety **within six (6) months of the violation date**. T.C.A. §55-50-502(a)(1)(I).

Failure to Satisfy (FTS) indicates the defendant did appear in court, but did not do all of the things ordered by the court (such as payment of fines, payment of costs, or completion of a traffic school). Since the defendant was found guilty of the traffic violation, a court action report should be timely submitted to report the conviction. If the defendant fails to pay the citation, the court clerk should indicate on the court action report that the defendant “Failed to Satisfy” (FTS).

Note: There are two cases on appeal in the Sixth Circuit concerning the State’s process for suspending and/or revoking drivers’ licenses. Specifically, these cases address due process requirements, payment plans, and indigency determinations. The case addressing suspended drivers’ licenses is Robinson v. Purkey No. 3:17-cv-0126 (M.D. Tenn., amended complaint filed 12/19/17); 2018 WL 5023330 (10/16/18). The case addressing drivers’ licenses is Thomas v. Haslam, No. 3:17-cv-00005, (M.D. Tenn., filed 1/4/17), 2018 WL 3301648 (July 2, 2018). The Tennessee Department of Safety stopped suspending drivers’ licenses for failure to pay after the Robinson case was decided in October 2018. If you have any questions about the process, please contact the MTAS Municipal Court Specialist.

Notifying the Department of Safety

Reference Number: MTAS-312

When a defendant fails to appear in court or satisfy a traffic citation, the municipal court may order the clerk to notify the Department of Safety of such action on the Court Action Report (courtreport.safety.tn.gov) [4]. The traffic case is then marked “Failed to Appear” (FTA) or “Failed to Satisfy” (FTS). Unlike reports of convictions, the failure to satisfy and failure to appear reports are optional.

Upon receipt of the FTA or FTS report, the Department of Safety will first try to notify the defendant by mail that driving privileges will be suspended. The defendant is given an opportunity for a hearing to show that there is an error in the records. The request for a hearing must be made within thirty (30) days of the notification. See, T.C.A. § 55-50-502(a)(1)(l).

Cities may send a letter to the defendant before the citation is sent to the Department of Safety for suspension. The letter would serve as a reminder to the defendant, as well as providing for another opportunity for a hearing on the matter.

The Department of Safety will not allow official correspondence to be forwarded to another address. 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 to the officer at the time the citation was issued.

Note: There are two cases on appeal in the Sixth Circuit concerning the State's process for suspending and/or revoking drivers' licenses. Specifically, these cases address due process requirements, payment plans, and indigency determinations. The case addressing suspended drivers' licenses is Robinson v. Purkey No. 3:17-cv-0126 (M.D. Tenn., amended complaint filed 12/19/17); 2018 WL 5023330 (10/16/18). The case addressing revoked drivers' licenses is Thomas v. Haslam, No. 3:17-cv-00005, (M.D. Tenn., filed 1/4/17), 2018 WL 3301648 (July 2, 2018). The Tennessee Department of Safety stopped suspending drivers' licenses for failure to pay after the Robinson case was decided in October 2018. If you have any questions about the process, please contact the MTAS Municipal Court Specialist.

When A Citation is Satisfied

Reference Number: MTAS-313

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. 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.

When the defendant satisfies the citation, an additional entry is made on the remaining copies indicating that the citation has been satisfied.

Also, notification should be made on electronic Court Action Reports. When a citation is satisfied, an entry should be made on the electronic report.

Failure to Appear in Court for Other Violations

Reference Number: MTAS-311

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. T.C.A. § 16-18-307. 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 personally or by certified mail, may be 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.

Driver Improvement Schools

Reference Number: MTAS-1587

Many courts use driver improvement schools as an alternative to requiring a defendant to pay a fine. A judge may actually require a defendant to attend traffic school in addition to or in lieu of any other punishment. In most cases, a judge will dismiss the charge upon completion of a traffic school. The court should still submit a Court Action Report. The report should be clearly marked as dismissed, with the "Traffic School" box checked. Submitting the Court Action Report will allow the courts to see if a defendant has previously had a case dismissed as a result of completing a driver improvement class.

It is noted that first-time offenders of the texting law are required to attend a driver improvement course, in addition to a fine. T.C.A. § 55-8-199(d)(2).

Also, a clerk should provide defendants a list of approved traffic schools in the county. TCA. § 55-10-301 (b)(4). See <https://www.tn.gov/safety/driver-services/driverimprovement/defensivedri...> [5]

Financial Responsibility Law

Reference Number: MTAS-1588

T.C.A. § 55-12-139(e)(2) prohibits a judge from dismissing any violation of Financial Responsibility charge if the defendant did not have insurance at the time the citation was issued, even if the defendant later obtained insurance. The court should submit a Court Action Report indicating that the defendant was "guilty."

If a defendant is able to show proof that he did have insurance in effect at the time the citation was issued, the court must dismiss the charge on a first offense. If so, the court cannot charge any fines, costs or fees. The court may dismiss upon second or subsequent offenses, but is not required to do so. T.C.A. § 55-12-139(e)(1).

The Municipal Court would lose jurisdiction if a person is not in compliance with the financial responsibility requirements at the time of an accident that resulted in *bodily injury or death* and such person was at fault for the accident. A person is at fault for an accident if the person acted with criminal negligence, as defined in § 39-11-106, in the operation of such person's motor vehicle.

If the driver of a motor vehicle fails to provide evidence of financial responsibility, a law enforcement officer may tow the motor vehicle as long as the officer's law enforcement agency has adopted a policy that describes the procedure for towing a motor vehicle.

Docket Book

Reference Number: MTAS-320

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

Maintaining the Docket

Reference Number: MTAS-321

The court may use bound docket books purchased from a vendor, and the book may have pre-printed docket numbers for each entry. Docket books without numbers also can be purchased. Pre-numbered 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; 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 Division of Municipal Audit. See MTAS-323 for Computerized Dockets [6].

Docket Book and the Audit Process

Reference Number: MTAS-322

The docket book is an integral part of the municipal court audit process. The information included in the court 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 for Tennessee Municipalities, Office of the Comptroller; Title 5, Chapter 15, §§ 13-28 (updated 6/30/10)).

Computerized Dockets

Reference Number: MTAS-323

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. ^[1]

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

[1] T.C.A. 10-7-121

Software for Court Dockets

Reference Number: MTAS-324

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

Reference Number: MTAS-325

Receipts

All cash transactions of the court must be recorded on pre-numbered 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 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 financial transactions are accounted for all city court cases are properly disposed

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.

For details on procedure, see the Comptroller's Internal Control and Compliance Manual (June 2010), Title 5, Chapter 14 and Chapter 15, Sections 13-32. (www.comptroller.gov/la/citymanual.asp [7]) Additionally, Tennessee Code Annotated, Title 9, Chapter 2, provides statutory procedures to account for revenues.

Traffic Citations and Audit Process

Reference Number: MTAS-326

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. Officers should be required to sign for each book of pre-numbered 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 while the case awaits trial, 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 recorded. 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.

For detailed procedures, review the Internal Control and Compliance Manual (June 2010), Title 5, Chapter 15, Sections 13-32. (www.comptroller.tn.gov/la/citymanual.asp [8]). The procedures include additional requirements for traffic citations issued by surveillance cameras.

Rules of the Road

Reference Number:

MTAS-327

Many cities have an ordinance in their codes that adopts misdemeanors of the state of Tennessee. The cities 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. The Court did not rule that such ordinances are unconstitutional, however, 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).

Seatbelts and Child Restraint Violations

Reference Number: MTAS-328

Fines collected for violations of seatbelt and child restraint violations must be forwarded to the state department of safety. However, PC 358 (2017) authorizes the court clerk to retain \$5 from the \$30 fine collected for certain violations. 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 \$30. (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 \$30 for the first offense and \$50 for subsequent offenses [1];
- The court clerk is authorized to retain \$5 of the \$30 fine.
- The court cannot collect court costs for seatbelt violations.

Notes:

The applicable statutes referenced in this summary are T.C.A. § 55-9-602 and § 55-9-603. Public Chapter 358 (2017) states that the subsequent offense would carry a \$55 fine. Municipal courts are limited to \$50 fines, per T.C.A. § 16-18-302(a)(2) and Article VI, § 14 of the Tennessee Constitution.

Sample Ordinance - City Judge

Reference Number: MTAS-1483

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 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

Sample Ordinance - State Traffic Offenses & Rules of the Road

Reference Number: MTAS-1484

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, registration requirements 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 §§ 55-4-101 through 55-4-128, §§ 55-4-130 through 55-4-133, §§ 55-4-135 through 55-4-138, §§ 55-8-181 through 55-8-191, § 55-8-193, § 55-8-199, §§ 55-9-401 through 55-9-408, §§ 55-9-601 through 55-9-606, § 55-12-139, and § 55-50-351, 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

Note: The sample ordinance is a guide. Prior to adoption, a municipality should review the referenced statutes in the sample ordinance along with the jurisdiction requirements of T.C.A. § 16-18-302. The statutes should be current with the Tennessee Code.

Sample Ordinance - Sample Financial Responsibility (Insurance)

Reference Number: MTAS-1589

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. Title 55, Chapter 12, Part 1, 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. Title 55, Chapter 12, Part 1, has been paid or filed with the commissioner of revenue, or the driver 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 it is the person's first violation and the court is satisfied that the financial responsibility was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility shall be dismissed. Upon the person's second or subsequent violation of this section, if the court is satisfied that the financial responsibility was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility may be dismissed. Any charge that is dismissed shall be dismissed without costs to the defendant and no litigation tax shall be due or collected.

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

EDITOR'S NOTE: If at the time of the violation, an accident resulting in bodily injury or death and such person was at fault for the accident, the municipal court shall have no jurisdiction unless it has general sessions jurisdiction. Public Chapter 479 (2013, effective 7/1/13)

Submitting Court Report/Fines & Form Requests

Reference Number: MTAS-1590

Court Action Reports (Abstracts):

Tennessee Department of Safety & Homeland Security

P.O. Box 945
Nashville, TN 37202
(615) 251-5271

Questions on suspended or revoked drivers' licenses:

Tennessee Department of Safety & Homeland Security
1-866-903-7357

Litigation Tax Report Information:

Tennessee Department of Revenue
(615) 253-0600
1-800-342-1003 (statewide number)

Links:

- [1] <http://state.tn.us/sos/acts/108/pub/pc0750.pdf>
- [2] <http://www.tncourts.gov/node/1232344>
- [3] <https://courtreport.safety.tn.gov/>
- [4] <http://courtreport.safety.tn.gov>
- [5] <https://www.tn.gov/safety/driver-services/driverimprovement/defensivedriving.html>
- [6] <http://www.mtas.tennessee.edu/reference/computerized-dockets>
- [7] <http://www.comptroller.gov/la/citymanual.asp>
- [8] <http://www.comptroller.tn.gov/la/citymanual.asp>

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