

## Airports

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://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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## Airports

**Reference Number:** MTAS-56

Click on the bulleted items below for information

## State Assistance

**Reference Number:** MTAS-77

### ***State Technical Assistance***

Engineering and other technical assistance is available from the state Department of Transportation to any city or group of cities requesting help with planning, acquiring, constructing, improving, maintaining, or operating airports. T.C.A. § 42-2-203(a).

### ***State Funding Assistance***

The department may give loans, grants, or both to any city or group of cities. Such funds are for planning, acquiring, constructing, improving, maintaining, or operating an airport that is owned or controlled by a city or group of cities. T.C.A. § 42-2-203(b).

The department also is authorized to act as agent for a city or group of cities to obtain and disburse federal money and other public and private funds to finance municipal airports. It must act as a municipality's agent for certain federal funds, but this is optional if the municipality's airport has a minimum of 25,000 originating takeoffs annually. At the request of a city or group of cities, the department also may act as agent in contracting and supervising airport construction, improvements, maintenance, or elimination of hazards, regardless of the size of the facility. T.C.A. § 42-2-203(c), T.C.A. § 42-2-223, T.C.A. § 42-5-119.

## Governing of Airports

**Reference Number:** MTAS-78

### ***Airport Officer or Board***

Authority for planning, constructing, and operating an airport may be transferred by resolution of a city's governing body to an airport officer or board. However, the facility remains the city's responsibility. T.C.A. § 42-5-112.

### ***Joint Operations***

One city may help another city or group of cities develop or operate an airport through a gift of land or personal property, or by a lease or loan with or without interest. T.C.A. § 42-5-121. Any two or more public agencies (including cities) may agree to jointly develop and operate an airport facility. An ordinance or resolution should specify the agreement's duration, the proportionate interest each agency has in the airport property, the proportionate cost to be borne by each agency, conditions for terminating an agreement, methods for disposing of jointly owned property, and liability for unpaid indebtedness.

A board may be established with members appointed by the participating public agencies. The board's size and the members' terms and compensation should be prescribed in the joint agreement. The board has the power to develop, operate, and police the airport facilities in the names of the participating agencies. The board's budget is subject to approval by the cooperating governing bodies, and the cooperating governing bodies must give their approval before the board can exceed its budget, dispose of any property, or adopt any policing regulations. Eminent domain proceedings may be instituted only by authority of the cooperating governing bodies. T.C.A. §§ 42-5-201–205.

### ***Airport Authorities***

Any city may establish a municipal airport authority by ordinance and appoint between five and 11 commissioners. Before the authority can become operative, it must apply for and be granted a

certificate of incorporation by the secretary of state. A regional authority may be created by resolutions passed by two or more cities, provided a public hearing is held in each municipality. Each city and county appoints two members, and the airport commissioners appoint an extra member. If they cannot agree on the additional member, that member is named by the governor.

City participation in the authority may be increased or decreased with consent from the authority commissioners and holders of at least 60 percent of any outstanding bonds. An amended certificate must be obtained from the secretary of state for any change in an authority.

Authority commissioners may receive no compensation for service, but they are entitled to be reimbursed for expenses they incur. An executive director and other technical and supporting personnel may be employed. For legal services, the authority may either use the city's attorney or employ its own counsel.

An airport authority has all the powers that could be exercised by a municipality operating an airport except levying and collecting taxes or special assessments. T.C.A. §§ 42-3-101–119.

Alternatively, three or more municipalities and counties and at least one political division of another state who jointly create and participate in a regional airport commission are authorized to create a regional airport authority by the passage of a resolution and subsequently entering into an interlocal agreement. T.C.A. § 42-3-104.

T.C.A. §§ 42-4-101, *et seq.*, create and govern metropolitan airport authorities.

### ***Funding of Airport Development and Operation***

A municipality is authorized to levy and appropriate taxes or other funds for airport development and operation. If the amount is in excess of any charter limitation, the tax levy must be approved by a majority of the city's voters unless the levy is for retiring bonds.

Airport costs may be partially or fully funded from the proceeds of bonds issued by the city. Any fees, rents, or other revenues pledged as security for bonds and fixed by the terms of a contract or lease may not be revised during the term of the lease or contract except as provided in that document. T.C.A. §§ 42-5-114–115.

Revenues received by the city from operating or selling an airport may be used for any municipal purpose. T.C.A. § 42-5-118.

## **Airport Construction and Expansion**

**Reference Number:** MTAS-79

### ***Authority to Use City Resources***

Any city may use public funds to plan, establish, develop, construct, enlarge, improve, equip, operate, regulate, protect, and police airports and air navigation facilities, whether or not they are inside city boundaries. A city may use land it already owns, or a city may acquire land through purchase, gift, lease, or eminent domain. Land also may be acquired for aviation easements or to remove or protect against airport hazards. County approval is required before a city may acquire property outside its corporate limits by eminent domain for an airport. T.C.A. § 42-5-103.

A city also may acquire existing airport or air navigation facilities by any of the above means. However, if the facility is owned or controlled by the state or other public agency, it may not be taken over without that agency's consent. T.C.A. § 42-5-104.

The city may not be prevented from going onto the land in question to conduct surveys and other examinations relating to the proceedings. It may take possession of the land any time after initiating proceedings and may abandon such proceedings any time before a final decree is entered. T.C.A. § 42-5-108.

### ***Annexation of Airport Property***

If three or more municipalities and counties jointly create a regional airport commission and the regional airport property is not located within a municipality's boundary, no municipality may annex any regional airport property without the prior consent of the legislative bodies of the participating municipalities and counties. T.C.A. § 6-51-117.

The property of an airport with regularly scheduled commercial passenger service that is in a county rather than in the creating municipality is an annexation-free zone unless the annexation is approved by the governing body of the creating municipality. T.C.A. § 6-58-116.

**Construction Over Public Waters or Submerged Lands**

Municipal airports may be established on any public waters, submerged lands, or reclaimed lands within or bordering the city's territorial limits. T.C.A. § 42-5-105.

## Airport Zoning Regulations

**Reference Number:** MTAS-80

Cities must prevent and eliminate airport hazards (structures, trees, and land uses obstructing air space) because they endanger both public safety and the public's investment in airports. In exercising this authority, a city must adopt and enforce zoning regulations for airport hazard areas within city boundaries. If a city cannot eliminate existing hazards under its police powers, it may do so "by purchase, grant, or condemnation" of real property. T.C.A. §§ 42-6-112–113.

When municipally owned airports are outside city boundaries, the city and the county may develop joint regulations, or the county may, by resolution, authorize the city to adopt regulations. If the city feels county regulations are not adequately enforced, or if the county fails to adopt regulations, the city may adopt and enforce airport zoning regulations with state approval. If county and city regulations conflict, those approved by the city will be in effect. T.C.A. § 42-6-103.

Airport zoning plans must be certified by the state Department of Transportation and by the city or regional planning commission before they become effective. T.C.A. § 42-6-105.

The procedure for adopting airport zoning regulations is much the same as for other zoning regulations. A public hearing must be conducted before an ordinance is enacted or amended. Notice of the time and place of the hearing must be published in a general circulation newspaper at least 15 days before the hearing. An ordinance may not be amended without approval of the agencies originally certifying the ordinance. If the ordinance amendment is disapproved by those agencies, it still may be adopted by a favorable vote of a majority of the entire membership of the city council. T.C.A. §§ 42-6-105–107.

A board of zoning appeals shall be established by the city council, which determines the method of appointing the three or five members and fixes their terms and compensation. If the city already has a board of zoning appeals, it may be designated to hear appeals of airport zoning regulations under the terms and conditions contained in T.C.A. §§ 42-6-108–109.

**Permits for Structures Near Airports**

Local zoning regulations generally control erecting structures near airports. However, state permits are required when local zoning has not been adopted to protect airspace around airports from tall structures and under certain other conditions. T.C.A. § 42-2-227.

## Operation and Use Agreements

**Reference Number:** MTAS-81

Provided the public interest is protected, a city may enter into contracts, leases, agreements, grants, or other arrangements for use of all or part of its airport by a person or persons for a term not to exceed 50 years unless other limitations are included in any loan or grant agreements. If the city operates the facility, the city establishes the terms and conditions of any agreements and fixes uniform charges, fees, or rentals for the privileges, services, or uses of the buildings. T.C.A. § 42-5-110(a).

A city may contract with one or more persons to operate the airport as an agent for the city for a period not to exceed 50 years. T.C.A. § 42-5-110(b).

The city may put liens on personal property to force payment for any charges, repairs or improvements the city makes on it. T.C.A. § 42-5-111.

## Miscellaneous Airport Provisions

**Reference Number:** MTAS-267

### ***Restrictions on Charges for Use of Airports***

A city or airport authority may not require payment of a license fee, tax, or other charge for any public use (landing or taking off) of an airport by planes weighing up to 12,500 pounds unless the aircraft is used by "regularly scheduled aeronautics." However, a charge may be made for storing aircraft overnight, and a tax or fee may be collected for selling aviation fuel. Metropolitan airport authorities are exempted from this law, and the Department of Transportation may exempt others "for good cause shown". T.C.A. § 42-2-107.

### ***Disposing of Airport Property***

Unless there are specific limitations included in grant or loan agreements, a city must sell or lease an airport or any portion of it in accordance with state laws or the city charter. If the facility is transferred to another governmental unit, however, disposal is on terms that are in the city's best interests. T.C.A. § 42-5-109.

### ***Regulations***

When a city acquires or establishes an airport, the local governing body may adopt ordinances and regulations to manage the facility and establish penalties for violations whether or not the airport is within the city's boundaries. The city also may appoint airport guards with full police powers to enforce its regulations. The airport is under the full control of the owner-city, but regulations adopted by the city must conform to state and federal laws and standards. An airport outside a city in Davidson, Shelby, Hamilton, and Sullivan counties is not subject to taxation by the jurisdiction in which it is located. T.C.A. § 42-5-113.

### ***Civil Air Patrol***

Civil Air Patrol activities are in the public interest, and cities may appropriate funds for them. T.C.A. § 42-7-101.

### ***Audits***

Any city receiving state funds for its aviation program must allow the state Department of Transportation to audit municipal books to assure the money is being used properly. Refusal to permit such an audit or misuse of aviation program funds may result in withholding of state funds. T.C.A. § 42-2-222.

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*DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.*

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