



What to Declare as Surplus

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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Reference Number: MTAS-774

Unless otherwise provided in your city's charter, MTAS recommends that the city's governing body declare property as surplus in a resolution. The board's decision should be reflected in a resolution – one that itemizes and describes the items being declared surplus, and authorizes the city staff to proceed with the sale. Such a policy serves to insulate the city staff from accusations of improperly selling (or giving away) city assets.

Recommendations to declare items as surplus would best be made by department heads, supervisors, managers, etc. But governing boards should make the final decision. The recommendations made by the staff should be in writing and provide defensible reasons for making the declaration. For its part, board members should carefully question recommendations to sell high value items, withholding their support for the proposed sale until they are satisfied that the public interest is being served.

The governing board's decision to declare property as being surplus should be made by means of a written resolution. For each item proposed for sale, the resolution should include two key pieces of information:

- The reason(s) for declaring the property to be surplus to the city's needs. The reasons for selling the property should be specific and verifiable.
- In the case of surplus city equipment, the resolution should refer to the make, model, serial number and age of each item proposed for sale. Additionally, automobiles should be referred to by the Vehicle Identification Number (VIN) and the approximate mileage of the vehicle.

Prior to the vote, each board member should carefully read the proposed resolution and ascertain for themselves that sound reasons exist for declaring the property surplus to the city's needs.

Prior to the Sale

While there are no state laws regulating a municipality's authority to advertise and sell surplus property, care must still be taken to assure that the city has the legal right to sell the items proposed for classification as surplus property. To prevent trouble after the sale, the following sources should be checked before seeking the board's approval for the sale:

- **The City Charter.** It is possible that a portion of your city's charter may disallow the sale of certain high value properties, at least without a referendum of the citizens. Selling the municipal gas or electric utility, for example, might require such a vote. In rare cases, the charter may also specify a general procedure for disposing of surplus property that the city would be obliged to obey.
- **The City Code.** Here again, the city may have enacted an ordinance that prescribes a procedure for selling city property. Similarly, it would be wise to see if any resolutions or motions of the board exist pertaining to surplus property sales. Your city's purchasing policy may also include provisions for selling surplus city property.
- **State Statutes.** State law generally recognizes the city's authority to decide what constitutes surplus property. But every municipal official and employee needs to be aware of *Tennessee Code Annotated* § 6-54-125, which makes it unlawful for any municipal official or employee to purchase surplus property from their municipality except by means of a bid at a public auction. This prohibition extends for six months after the employee or official leaves office. Violation is a Class A misdemeanor.
- **Contracts and Agreements with Other Parties.** You should be aware that contracts may exist that preclude the city from selling certain properties that were acquired by means of donations or grants. Certain pieces of equipment purchased with grant funds might be complicated to sell. The terms of the grant may either prohibit the sale or require that the sale proceeds are shared with the grantor. It would be wise to review the grant documents signed by the city prior to offering such equipment for sale.

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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