Published on *MTAS* (https://www.mtas.tennessee.edu) November 14, 2019

Governing Structure

Dear Reader:

The following document was created from the MTAS website (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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Charters

Reference Number: MTAS-158

What is a Charter?
A charter is a municipality's birth certificate issued by the Tennessee General Assembly. However, it differs from the birth certificate of a child in an important respect: A municipality's birth certificate comes with a laundry list of what it can and cannot do. The General Assembly puts the list in the document we call, "The Charter." When the general assembly adds to or takes away from that list, as it has the power to do, we say it has "mended the charter." There's a second laundry list of what a municipality can and can-not do. That list is all the general laws passed by the General Assembly that apply to municipalities. They're found splattered throughout the Tennessee Code Annotated (T.C.A.). The General Assembly can add to or take away from that list, too. When it does so, it has also "amended" the municipality's charter.

Keep in mind Dillion's Rule and its exceptions, and remember that you must look two places to determine what your municipal charter says.

In two cases that have not yet been overturned, the Tennessee Supreme Court defines a charter as:

- The "constitution of the local government, granted by the [General Assembly], with powers which must be consistent with the [Constitution of Tennessee]" (and of the United States it might have added). *East Tennessee University v. Mayor of Knoxville*, 65 Tenn. 166 (1873).
- A grant of power from which the city government derives its life and vigor and its limitations and restrictions. *State ex rel. Kercheval v. Mayor of Nashville*, 83 Tenn. 697 (1885).

The fact that those definitions were issued by a court ought to clue everyone into another important fact about charters: The courts, both state and federal, have a great deal to say about whether something in one is legal. The federal courts have even gone so far as to tell some municipalities that the form of government provided in their charter is illegal.

Those definitions also get across the point that a municipal charter is the constitution of the town or city, the document which brings into existence and defines its powers.

Dillon's Rule

Reference Number: MTAS-866

Dillon's Rule - Relationship of Municipalities to the State
To understand what a municipal charter is, you have to know what a municipality is. You may be surprised to learn that, from a legal standpoint, a municipality almost anywhere in the United States, including Tennessee, is not much. Some writers have compared municipalities to children and state legislatures to their parents. But that comparison isn't completely accurate because most children have greater legal protection against their parents than municipalities do against their state legislatures.

The classic statement of a municipality's relationship to its state legislature was made by Judge John F. Dillon speaking for the Iowa Supreme Court in the famous case of *City of Clinton v. Cedar Rapids and Missouri Railroad Company*, 24 Iowa 455 (1868):

Municipal corporations owe their origin to, and derive their powers from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it created, so may it destroy. If it may destroy, it may abridge the control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and a great wrong,

sweep from existence all of the municipal corporations of the state, and the corporations could not prevent it. We know of no limitation on this right so far as corporations themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.

There is a “constitutional limitation” against abolishing Tennessee’s home rule municipalities found in Article XI, Section 9, of the Tennessee Constitution. In addition, the remaining Tennessee municipalities receive a measure of security from abolition in the same provision of the Tennessee Constitution, which provides that “The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be changed.” In any event, the legal subordination of municipalities to their state legislatures is no reason to lock up city hall and go home. Municipalities in every state have been around for a long time; there are more than 340 of them in Tennessee.

But Judge Dillon didn’t stop there. In *Merriam v. Moody’s Executor*, 25 Iowa 163, 170 (1868), he achieved everlasting fame among municipal lawyers and students of local government by announcing what is known as Dillon’s Rule. Dillon’s Rule outlines the kind of powers legislatures give to municipalities and what happens if there is some doubt about a municipality’s power:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in **express** words; second, those necessarily or fairly **implied** in or incident to the powers expressly granted; third, those **essential** to the accomplishment of the declared objects and purposes of the corporation — not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.

Dillon’s Rule has been abolished in some states, but in the recent case of *Southern Contractors v. Loudon County Board of Education*, 58 S.W.3d (Tenn. 2001), the Tennessee Supreme Court announced that Dillon’s Rule still lives in Tennessee and applied it to hold that while a county school board did not have the express authority to arbitrate a contract, it had the implied power to arbitrate the contract at issue. **But, the court also pointed out that Dillon’s Rule is only a rule of statutory construction that applies when a statute is ambiguous**, and that several important exceptions to that rule have diminished its practical importance. The rule:

- Does not apply to home rule municipalities; and
- Where the General Assembly has granted local governments “comprehensive governmental power … without either enumerating the powers or expressly limiting the scope of that authority,” that “general provision” [will] be “liberally construed.” The court cited three examples of comprehensive grants of powers to municipalities from the general law municipal charters found in *Tennessee Code Annotated*, Title 6:
    - Section 6-19-102 of the general law manager-commission charter: “The enumeration of particular powers in this charter is not exclusive of others, or restrictive of general words or phrases granting powers, nor shall a grant or failure to grant power in this chapter impair a power granted in any other part of this chapter, and whether powers, objects or purposes are expressed conjunctively or disjunctively, they shall be construed so as to permit the city to exercise freely any one (1) or more such powers as to any one (1) or more objects for any one (1) or more such purposes.”
    - Section 6-19-101(33) of the general law city manager commission charter: “[Every city incorporated under chapters 18-22 of this title may] [h]ave and exercise all powers that now or hereafter it would be competent for this charter specifically to enumerate, as fully and completely as though such powers were specifically enumerated in this section.”
    - Section 6-2-201(32) of the general law mayor-aldermanic charter: “[Every municipality incorporated under this charter may] [h]ave and exercise all powers that now or hereafter it would be competent for this charter specifically to enumerate, as fully and completely as though these powers were specifically enumerated.”

Types of Charters

Reference Number:

MTAS-159

The General Assembly makes grants of power to Tennessee municipalities through two kinds of laws: **private acts** and **general laws**. Private acts apply only to a specific town or city; general laws apply either to all cities and towns or, frequently, to all cities and towns within a certain class (for example, all cities and towns with a population of 1,134 to 1,876 according to the 1980 census or any census thereafter). The latter kind of general law is often called a general law of local application because in reality it usually applies to only one or two specific towns or cities. There are at least two kinds of municipal charters in Tennessee: **private act** and **general law**. Tennessee also has 14 municipalities that have a **home rule** charter.

- **Private act charter.** All cities with a private act charter were incorporated before 1953 when the constitution was amended to prohibit incorporating cities by special act. If a private act city wants to amend its charter, the city's legislative delegation introduces the amendment in the General Assembly, and the city must ratify the new private act, either by majority vote of the governing body or by referendum;
- **Home rule charter.** A city wanting home rule government writes its own charter and adopts it in a referendum. A home rule city seeking to amend its charter must submit the amendment to a referendum. There are 14 home rule municipalities in Tennessee; and
- **General law charter.** A city may adopt one of the "form charters" that are written into the state code.

Consolidation of City and County Functions
The Eighth Amendment to the Tennessee Constitution deals with consolidating city and county functions (Article XI, Section 9). Under its terms, merging any function, such as schools, or completely consolidating city and county governments, as in Nashville and Davidson County, must be approved in a referendum by a majority of the vote in the city and a majority of the vote in the remainder of the county. Implementing legislation for complete city/county consolidation is found in T.C.A. §§ 7-1-101–7-3-312. A second consolidation act, the Charter Government Unification Act, applies to counties with a charter form of government. T.C.A. §§ 7-21-101, *et seq.*

Internet Posting of Charters
Each municipality must post its charter on a website maintained by the municipality, or, if the municipality has no website, the charter must be posted on the secretary of state's website. T.C.A. § 5-1-127.

Private Act Charter

Reference Number: MTAS-329

A private act charter applies only to the city or town with that specific charter. In other words, if your city or town is chartered under, say, Chapter 319, Private Acts of 1943, there's only one city or town to which Chapter 319, Private Acts of 1943, applies: yours. The city or town next door to yours may also have a private act charter, but it will be chartered under, say, Chapter 27, Private Acts of 1901.

All cities with a private act charter were incorporated before 1953 when the constitution was amended to prohibit incorporating cities by special act. If a private act city wants to amend its charter, the city's legislative delegation introduces the amendment in the General Assembly, and the city must ratify the new private act. The governing body of a private act city can play a major role in determining the municipal government's form and structure. Its members can influence the legislature to make private act amendments, which may then be approved by a two-thirds vote of the governing body or by referendum. In a home rule city, charter amendments may be initiated by the governing body passing an ordinance, which is then submitted for referendum approval

Don't get private act charters and general law charters mixed up. If you have a private act charter, none of the general law charters apply to your municipality. Your private act charter may provide for the mayor-aldermanic form of government, but the general law mayor aldermanic charter does not apply to your city.

There are general laws throughout *Tennessee Code Annotated* that apply to both private act and general law municipalities, but the general law charters apply only to municipalities that have those particular general law charters.

General Law Mayor-Aldermanic Charter

Reference Number: MTAS-330

The mayor-aldermanic general law charter (T.C.A. §§6-1-101, *et seq.*) provides for a board of mayor and aldermen consisting of the mayor and two to eight aldermen. Newly incorporated cities must have at least one ward, and two aldermen must be elected from that ward. Newly incorporated cities with more than 5,000 people must have at least two wards, and two aldermen must be elected from each ward.

Any existing city also may adopt the mayor-aldermanic charter. The board appoints the recorder, the treasurer, the city judge (if he is not exercising concurrent jurisdiction with general sessions court; see Chapter 6, City Courts), and other department heads. The mayor prepares the budget, hires and fires employees, and sees that all city laws and ordinances are enforced. However, the board may designate itself or someone else to perform any or all of these mayoral functions. The board may appoint a city administrator by ordinance.

Municipalities that were incorporated under the mayor-aldermanic charter before June 30, 1991, may establish wards, increase or decrease the number of aldermen, and switch to staggered terms in accordance with T.C.A. §§ 6-3-101–102. Municipalities with non-staggered two-year terms may change by ordinance to non-staggered four-year terms.

T.C.A. § 6-3-101(a) allows municipalities that incorporated under the mayor-aldermanic charter after June 30, 1991, to modify the number of aldermen and/or wards by ordinance. The ordinance must provide for staggered four-year terms but may provide for transitional terms of fewer than four years.

T.C.A. §§ 6-3-101(b) and 102(a) allow municipalities incorporated under this charter that have only one ward to provide by ordinance for election of aldermen by numerical position. A person seeking office as an alderman may qualify for only one position.

General Law City Manager-Commission Charter

Reference Number: MTAS-331

The city manager-commission charter (T.C.A. §§ 6-18-101 *et seq.*) provides for a council-manager government similar to the model city government charter recommended by the National Civic League.

A city operating under this charter has a number of options when structuring its governing body. Small cities may have three or five commissioners. Cities with more than 5,000 residents elect five commissioners for staggered four-year terms. A city with a population of more than 20,000 may increase the number of commissioners from five to seven by ordinance, which is subject to referendum approval. T.C.A. § 6-20-101. Elections may be at-large or from single-member districts. The commissioners may appoint one of their members as mayor, or the citizenry may elect the mayor to a four-year term.

The charter may be adopted by any newly incorporating or existing city.

The commission appoints a city judge if the judge is not exercising concurrent jurisdiction with general sessions court. The commissioners appoint a city manager who serves at their pleasure, and he or she may be removed only for cause during the first year of employment. The manager is responsible for purchasing, financial affairs, administration, presenting a proposed budget to the commission, selecting and appointing all department heads other than the city judge, and seeing that all city laws and ordinances are enforced. T.C.A. §§ 6-18-101, *et seq.*

Modified City Manager-Council Charter

Reference Number: MTAS-332

The city manager-council charter (T.C.A. §§ 6-30-101 *et seq.*) leaves fewer options in structuring local government than the other two forms.

Seven or more councilmembers are elected from single-member voting precincts for four-year terms. If a city has fewer than seven precincts, the remaining councilmembers are elected at-large. The mayor is elected to a two-year term by his or her fellow councilmembers. The city may ask its legislative delegation to pass a private act allowing all councilmembers to run at-large. For a new city to incorporate under the city manager-council charter, the community must have at least 5,000 residents. There is no explicit provision for existing cities to adopt this form.

The council appoints the city attorney and a city manager. The city judge is elected to a four-year term or an eight-year term if exercising concurrent jurisdiction with general sessions court. All other department heads are appointed by the city manager. The manager serves at the pleasure of the city council. He or she is responsible for purchasing, financial affairs, administration, presenting a proposed budget to the council, and seeing that all city laws and ordinances are enforced. Councilmembers are prohibited from giving orders to the manager's subordinates. Except for inquiries, they are to deal with administrative officers and city employees solely through the manager.

Unlike the two other statutory charters, the modified city manager-council charter includes a recall provision. T.C.A. § 6-31-301, also see T.C.A. § 2-5-151.

Home Rule

Reference Number: MTAS-333

In Tennessee, home rule means that a city may adopt and change its own charter by local referendum. If a city adopts home rule, the legislature may not pass private acts that apply to that city. General laws that apply to all cities also are applicable to cities with home rule charters.

If a city chooses home rule, it relinquishes the opportunity to have the legislature pass private acts for it. Instead, residents must approve by local referendum any changes to the home rule charter. In addition, T.C.A. § 6-53-105(c) requires that the municipal chief financial officer estimate the cost and revenue impact of home rule amendments and that such estimates appear on ballots containing amendments to home rule charters.

In 2016, fourteen Tennessee cities and towns have hom rule charters: Chattanooga, Clinton, East Ridge, Etowah, Johnson City, Knoxville, Lenoir City, Memphis, Mt. Juliet, Oak Ridge, Red Bank, Sevierville, Sweetwater and Whitwell.

Amending Charters

Reference Number: MTAS-160

Click on the topics below in this section for more information

Amending General Law Charters

Reference Number: MTAS-334

To amend a charter in a general law city, the legislature must pass a public act amending the statute. In order for the legislature to consider a proposed amendment, there must be general agreement (or at least no major disagreements) among most of the cities operating under that charter. If there is not agreement, the legislature is not likely to pass a general law amendment.

Amending Home Rule Charters

Reference Number: MTAS-298

Home Rule Charter Municipalities Amend Their Own Charters
Home rule charter municipalities in Tennessee are peculiar — they amend their own charters. Amendment Number 7 of the 1953 amendments to the state constitution prohibits the General Assembly power to pass general laws governing home rule municipalities and says that no charter shall be inconsistent with the general law (except with respect to employee compensation).

The Home Rule Charter Amendment Referendum
Home rule municipalities amend their charters by local referendum. Amendment Number 7 provides three ways amendments to home rule charters are proposed and formulated for submission to voters in a referendum:

- By passage of an ordinance by the governing body of the municipality;
- By a charter commission established by an act of the General Assembly and elected by the qualified voters of the home rule municipality; or
- By a charter commission of seven members chosen at large (not more than once every two years) in a municipal election held pursuant to a petition of not less than 10 percent of the voters of the home rule municipality voting in the latest general municipal election.

The 14 home rule municipalities usually use the first method, by ordinance of the municipal governing body, to propose charter amendments for referendum. The second method has never been used, and the third method apparently has been used only rarely.

The referendum on adopting the proposed charter amendment must be held during the first general state election falling at least 60 days after publication of the proposed charter amendment. T.C.A. § 6-53-105. In addition, T.C.A. § 2-3-204 requires that the election commission must be notified of a referendum between 75 and 90 days prior to the election. A general state election is apparently either the primary election in August or the following general election in November, both of which are held every even-numbered year. That definition restricts referendums on charter changes in home rule municipalities to once every two years at fixed times. To pass the proposed charter amendment, a majority vote from those voting on the question is required, not a majority of those voting in the election in which the question was presented to the voters.

Amending Private Act Charters

Reference Number: MTAS-297

1. Figure out precisely what charter provisions are to be changed. This step is important because one change may require amending more than one provision of the charter to ensure that the charter is consistent. Changing one provision may affect other provisions. This step requires reading the whole charter to make sure you have not skipped anything that needs changing.

2. Clear the proposed change with your state legislative delegation. All private act and general law charter changes require the approval of the Tennessee General Assembly, but the General Assembly will rarely interfere with amending private acts as long as they have the unanimous support of the local legislative delegation. Its attitude is usually, “Let locals take care of local business.” But if you decide to sneak or ram your private act through the General Assembly in the teeth of opposition from any member of your legislative delegation, do not bet more than you can afford to lose that the act will make it.

3. Adopt a resolution containing the proposed charter change and ask a member of your legislative delegation to introduce the change in the General Assembly. The part of the resolution containing the proposed change should be in letter perfect form and should specify exactly what and where the charter should be amended.

Be sure to include in the proposed change the method of local approval of the private act. Amendment Number 6 of the 1953 amendments to the Tennessee State Constitution requires private acts to be approved in one of two ways:

- By a two-thirds vote of the entire membership of the municipal governing body, or
- By a majority vote in a referendum held on the question of approval of the private act.

4. Give the resolution to your legislative delegation within the time frame it prescribes and check from time to time on its introduction and movement through the Tennessee General Assembly. Getting the proposed private act to your legislative delegation on time is essential. This gives the General Assembly adequate time to pass the act before it adjourns. Most legislative delegations want the proposed private act at least 30 days before the date set for adjournment of the General Assembly. That date usually can be determined (approximately) by checking with your legislators. Once the proposed private act is in the hands of the General Assembly, its journey through the legislative process is relatively certain and speedy. After passage by the General Assembly, the proposed private act goes to the governor for signature, which usually is a formality.

5. Read the private act when it comes back to you after its passage by the General Assembly and its approval by the governor. Your proposed private act goes through certain steps after it leaves your hands and before it actually goes to the General Assembly for a vote, including a check for proper language and form. Most of the time, any changes made in a proposed private act during those steps are beneficial. However, occasionally something is added or taken out of an act that substantially alters its meaning. Make sure that what came out of the General Assembly is what you thought went in.

6. Obtain approval of the proposed private act by whatever method is prescribed in the act and submit evidence of approval to the Tennessee secretary of state. As pointed out earlier, private acts requiring approval by referendum are regularly rejected by the voters. Some get exactly what they deserve from a well-informed electorate, which knows a clunker when it sees one. But a major reason good acts meet the same end is that they frequently do not receive the intense support they need from the individuals and groups interested in their passage.

Creation, Merger, Dissolution of Cities

Reference Number: MTAS-161

State Constitutional Provisions Regarding Creation and Control of Municipalities

Municipalities are created and controlled by the state legislature. Unless there is a constitutional or federal law limitation, the state legislature may do anything it wants to a municipality, including ending its existence. A municipality’s only powers are those given by the state legislature and constitution. Before 1953, there were no state constitutional restrictions on the state legislature’s authority over municipalities. That year, the Sixth, Seventh, and Eighth Amendments to the Tennessee Constitution were adopted, giving citizens more control over their own cities. (These amendments can be found in Article XI, Section 9, of the state constitution. See Chapter 3, Forms of Government and Governing Bodies, for a more detailed discussion about private acts, general laws, and home rule.)

The Sixth Amendment says that before a private act (legislation applying only to cities named in the act) becomes effective, it must be approved locally by a two-thirds majority of the local legislative body or by referendum. The Sixth Amendment also prohibits the legislature from passing private acts that remove incumbents from any municipal office, shorten their terms, or alter their salaries.

The Seventh Amendment gives municipalities the option of adopting home rule by referendum and prohibits the legislature from passing private acts applying to home rule cities. This amendment also says that all new municipalities shall be incorporated only under general law charters provided in state law.

The Eighth Amendment provides for the consolidation of city and county functions.

Annexation, Merger, or Creation of Cities

The Tennessee Constitution states, "The General Assembly shall, by general law, provide the exclusive methods by which municipalities may be created, merged, consolidated, and dissolved and by which municipal boundaries may be altered" (Article XI, Section 9).

The state courts have routinely declared unconstitutional annexation laws that exempt certain counties or that apply only to cities with specified populations. This constitutional provision has also been interpreted as preventing the creation of additional private act chartered municipalities. Thus, any unincorporated area wishing to incorporate must do so under one of several general law charters found in Title 6 of T.C.A. (Volume 2B).

Incorporating New Cities

Reference Number: MTAS-295

Communities incorporating under mayor-aldermanic or city manager-commission charters must have at least 1,500 residents.

No territory shall be incorporated within five miles of an existing city of 100,000 or more residents or within three miles of a city of fewer than 100,000 residents. T.C.A. § 6-1-205, T.C.A. § 6-18-103.

T.C.A. § 6-58-112 provides that no new municipality may be incorporated unless it is within a planned growth area. (See Chapter 23, Countywide Growth Plan, Annexation and Boundary Adjustments, and Dissolution). The county legislative body must approve the incorporation prior to the incorporation election. The new municipality must levy a property tax at least equal to its portion of state-shared revenue. For 15 years following its incorporation, the newly incorporated city must give the county the same amount of local option sales tax and wholesale beer tax the county was collecting on the date of incorporation. T.C.A. § 57-6-103, T.C.A. § 67-6-712.

Newly Incorporated City Taking Over Services

If a county government is delivering urban services in an area that becomes part of a city by annexation or incorporation, the city has priority in providing public services. The governing body must declare its desire to take over existing services. Arbitration, subject to court review, is ordered if the parties cannot agree. T.C.A. § 5-16-110 Municipalities also may have a prior right to take over a utility district's service territory in newly annexed areas of the municipality. T.C.A. § 6-51-111. That right may be restricted by federal law where the utility district has issued certain bonds. 7 U.S.C. 1926(b).

Posting of Charters Required

Reference Number: MTAS-867

The Internet is the most useful tool for promoting effective democracy since Gutenberg's printing press. As our communities rely increasingly on the Internet as their primary source of information, our consideration of web sites as a primary repository of public information is critical to an informed electorate. For years federal and state governments have taken steps to require an increasing amount of public and governmental information be accessible via the Internet. There are now similar requirements for local governments.

Recognition of this by the Tennessee Legislature occurred with the passage of Public Chapter No. 808. T.C.A. § 5-1-127. This act requires each Tennessee municipality and county to post its charter of incorporation on a website maintained by the municipality or county. If no such website is maintained, the charter must be posted on the Tennessee Secretary of State's website. Additionally, within three months following any changes or revisions to the charter, the electronic language posted on the website shall be corrected by the municipality or county to reflect such changes or revisions. If your charter has

been sent to the secretary of state, their office is not required to keep it current, your city should send a copy of any amended charter to the secretary of state as soon as possible.

A local charter is the legislatively granted foundation of every local government. Being the expression of municipal power and responsibility, it is imperative that every resident have unfettered access to a charter's contents. Charters are open to public inspection under our state's open records laws. T.C.A. §§ 10-7-501 *et seq.* Logistically, this should pose no significant expenditure of time or resources to city personnel. There are currently electronic copies of the charters of every Tennessee city posted on the MTAS website.

If your city does not maintain its own website and you need assistance posting your charter on the secretary of state's website, please contact Robert Greene, publications liaison, at (615) 253-4571 or robert.a.greene@state.tn.us [1].

Work with Tennessee Municipal League

Reference Number: MTAS-990

City officials should work with the Tennessee Municipal League (TML) to stay abreast of legislative happenings. The league is the eyes, ears, and voice of cities on Capitol Hill. City officials should inform the league as early as possible of the need for legislation or the city's intent to have legislation introduced. This same advice holds true for other organizations that want to have legislation affecting cities adopted.

Many awkward situations and much embarrassment can be avoided simply by informing the league of proposed legislation. Following are examples of what can happen when cities don't coordinate efforts with TML.

The league drafted a general bill amending a particular section in T.C.A. A city had a bill drafted and introduced that amended the same section in its entirety. The league's bill passed, and the city's bill passed afterwards. Since the league's bill amended only part of the section and the city's bill amended the whole section, the city's bill wiped out the amendment affected by the league's bill. The league had to draft and gain passage of similar legislation during the next legislative session. This embarrassing incident could have been avoided by one phone call from the city to the league.

In a similar situation, an organization that works for cities had legislation drafted and introduced, but did not inform the league. The legislation died, partly because the league had not lobbied for it. Fortunately, there was a similar legislation pending in a committee. After a plea for help from the organization and a great deal of effort, the league was able to aid the organization in passing that legislation.

So, it is extremely important to follow this rule: Inform TML of legislation your city needs or intend to have introduced.

Code of Ordinances

Reference Number: MTAS-380

What is a Code of Ordinances?

A city's municipal code of ordnance is its compilation of all the city's laws and some of its regulations. These laws are generated through the passage of individual ordinances, and all ordinances, other than administrative ordinances (budget ordinances, tax ordinances, annexation ordinances, etc.), are contained within the municipal code. This does not mean the actual ordinance is contained in the municipal code, but rather those provisions of the ordinance that formulate a law or regulation are contained within a chapter of the municipal code.

The municipal code provides the governing body, the city's administration and the citizens one basic source for discerning the current laws and regulations governing the city. A quick check of the municipal code and the ordinance book (for ordinances adopted since the last update of the municipal code) will give anyone seeking information the current laws and regulations for your city. Otherwise, it is a process of checking minute books, files, etc., and running the risk of making errors and misinforming someone.

Procedures for Adopting Ordinances

Reference Number: MTAS-162

Ordinances and Codes

Ordinances are the legislative enactments of municipal governing bodies. Codes are comprehensive ordinances, such as building, plumbing, and electrical regulations. A code of ordinances is a compilation (codification) of all city ordinances.

Procedures for Adopting Ordinances

Charters usually spell out the procedures for adopting ordinances, including the number of readings required. If the charter is silent, ordinances need to be read only once. The general law mayor-aldermanic charter requires two considerations of an ordinance. T.C.A. § 6-2-102. The general law city manager- commission charter calls for two readings, and a city may establish by ordinance a procedure to read only the caption instead of the entire ordinance. T.C.A. § 6-20-215. The modified city manager-council charter requires two readings. T.C.A. § 6-32-202.

Publication of Ordinances

Reference Number: MTAS-299

Generally, ordinances do not need to be published unless the charter or a specific general law requires otherwise. General law mayor-aldermanic cities have the option of publishing each ordinance or only the caption. T.C.A. § 6-2-101.

General law city manager-commission cities must publish each penal ordinance or the caption. T.C.A. § 6-20-218. Publication must be in a city's general circulation newspaper and is necessary for an ordinance to become effective.

Under the general law modified city manager-council charter, at least an abstract of the essential provisions of each ordinance should be published within 10 days after its adoption. T.C.A. § 6-32-204.

Notwithstanding charter provisions to the contrary, the city needs to publish only the caption and a summary of a comprehensive zoning ordinance. T.C.A. § 13-7-203.

Adoption of Model Codes

Reference Number: MTAS-300

Professional organizations have prepared a number of model codes, such as those for building, plumbing, and electrical, that can be adopted by municipal governing bodies. Such a code may be identified in an ordinance adopting it by reference, which avoids publication. A copy of any code adopted by reference must be filed with the city clerk and be made available for public inspection at least 15 days before the adopting ordinance passes. However, any penalty provisions must be in the adopting ordinance, which must be published in the manner prescribed for ordinances.

If a model code has been adopted, any subsequent amendment must be adopted unless the governing body, by a vote of at least two-thirds of its total membership, elects not to incorporate the amendment. T.C.A. §§ 6-54-501–505, 507.

T.C.A. § 6-54-502(c) contains provisions for administratively adopting amendments to model codes.

Adoption of State Misdemeanors

Reference Number: MTAS-301

T.C.A. § 16-18-302 allows municipalities to adopt any Class C state misdemeanors by reference or substantial duplication as an ordinance violation as long as the punishment for the ordinance violation is limited to $50.

Adopting and Updating Code of Ordinances

Reference Number: MTAS-164

Cities adopt ordinances one at a time. Eventually, this collection of ordinances becomes unwieldy unless it is organized under common categories and indexed. Organizing individual laws into a coherent book of laws is called "codification."

The procedure for making an effective codification is spelled out in T.C.A. §§ 6-54-508–509. It includes publishing notice of and holding a public hearing on the proposed code; adopting the new code by ordinance in accordance with charter requirements; publishing notice of adoption of the code; and placing a copy of the code in the city clerk's office for public inspection. Newspaper publication of the code is specifically not required. However, if the codification contains any new penal provisions, they must be stated explicitly in the published notice for the public hearing.

T.C.A. § 6-54-510 provides that errors in the original ordinances are cured if corrected in the codification and the new code is adopted by the city council.

Code Adoption Procedures Required by State Law

Reference Number: MTAS-1038

You must comply with certain provisions in the state law before and after your new code is adopted.

Adoption of Standard Codes by Reference

T.C.A. §§ 6-54-501 through 6-54-506 authorize the adoption of various technical codes by reference but require that one copy of any code that is adopted by reference be filed in the office of the recorder at least 15 days prior to adoption and thereafter kept available for public use, inspection, and examination. Therefore, before the city adopts its new code of ordinances, be sure that you have acquired and have on file at least one copy of any building codes that are adopted by reference in Title 7 and in Title 12.

Notice Prior to Adoption of Municipal Code

T.C.A. § 6-54-508 provides that "...[a] public hearing shall be held prior to adoption of a code of ordinances and advance notice thereof shall be published in a newspaper of general circulation in the municipality.... If any part of such code of ordinances contains new provisions of a penal nature, then such published notice shall specifically state such fact and shall also state that a copy of such new provisions are available at the city recorder's office for examination."

A notice in substantially the following form should suffice:

> Public Hearing on Proposed Code of Ordinances
> Notice is hereby given that a public hearing on the adoption of a municipal code of ordinances will be held by the town council of the town of _____, Tennessee, at ____ p.m. on the _____ day of _____, 20___, in the town hall. A copy of the proposed code of ordinances is available in the recorder's office for anyone who desires to examine it in advance of the hearing.
>
> Notice is also given that the proposed new code of ordinances contains new provisions of a penal nature.
>
> The general penalty prescribed for violations of the code is set forth in Section 5 of the adopting ordinance. See page ORD-2 in the code.

Notice After Adoption of Municipal Code

T.C.A. § 6-54-509 provides that "[a]ny municipality which on or after March 21, 1955, adopts a code of ordinances shall publish in a newspaper of general circulation in the municipality a notice that a code of ordinances has been adopted and that a copy is available at the city recorder's office for anyone who desires to examine it. Such notice shall also include a statement providing notice of any new provisions of a penal nature in such code of ordinances."

After your new code is adopted we suggest publishing a notice in substantially the following form:

> Municipal Code of Ordinances Adopted

Notice is hereby given that a municipal code of ordinances was adopted by the board of mayor and aldermen of the town of _____, Tennessee, on the _____ day of _____, 20__, and is available in the recorder's office for anyone who desires to examine it.

Notice is also given that the new code of ordinances contains new provisions of a penal nature.

The general penalty clause for violations of the code is set forth in section 5 of the adopting ordinance. See page ORD-2 in the code.

Code Adopting Ordinance

Reference Number: MTAS-1040

The adopting ordinance on pages ORD-1 through ORD-4 should be numbered, dated, and signed immediately upon adoption. When the code is ready for adoption, the adopting ordinance should be treated as any other ordinance. It should be numbered and adopted accordingly.

Note that Section 2 of the adopting ordinance repeals "all ordinances of a general, continuing, and permanent application or of a penal nature not contained in the municipal code." Section 3 saves certain ordinances from repeal. Make sure that all ordinances that will be affected by Section 2 are in the code before final reading. Send all ordinances that you want to include in your municipal code to MTAS. You will have to re-adopt any ordinances that are omitted from the code and repealed by the adopting ordinance. Ordinances passed after adoption, however, will be included in future code updates. If you have any question as to whether or not an ordinance should be in the code, ask your MTAS consultant.

The certificate of authenticity that appears in the back of the code must be certified by the recorder after the code is adopted. Please forward a copy of the adopting ordinance and certificate of authenticity to MTAS after the code has been adopted.

Codification Services and Fees

Reference Number: MTAS-1041

MTAS provides two classes of codification services: an annual update service and a complete code service.

The annual update service includes updating the city’s code once a year by incorporating all of the ordinances adopted during the past year and any amendments made to the city’s charter. All cities that take advantage of this service will pay an annual fee of two hundred dollars ($200),* which includes the web-hosting of the charter and full code as well as ten (10) copies of the updated pages. Additional copies will be invoiced separately based on our actual costs for duplication, dividers, and shipping. When a city that has a web-hosted code by MTAS submits ordinances to update the code, the city will be charged twenty-one dollars ($21) per page* based on the number of pages that are modified by the ordinances. For cities who do not have an MTAS web-hosted code, the city will be charged twenty-five dollars ($25) per page* based on the number of pages that are modified by the ordinances. The per-page fee allows for a cost that is based on the amount of work done on each update. MTAS will invoice cities for updates when the work is completed and sent to the city.

The second service is for the creation of a complete code, which includes new codes from scratch, all conversions and re-codification of old MTAS codes and any conversion of a code prepared by a private code company. Charges for complete codes services are based on population because of the relative work load and the ability of the city to pay. MTAS will send an invoice to cities for fifty percent (50%) of the cost of a complete code when we are ready to begin work on the code, usually three to four months before completion. MTAS will invoice cities for the remaining 50 percent upon delivery. Once your complete code is adopted by the city, the city should begin the annual update service listed above by sending MTAS all ordinances passed since the code was adopted. The first update should be scheduled one year after final reading on your code-adopting ordinance. The code will be web-hosted by MTAS with no additional charge for one year from the date of adoption.

Modifications to the city charter are not subject to the per page charge. The following charges went into effect in July 2012:

Population	Complete Code	Annual Update With Web Hosting	Annual Update Without Web Hosting
0–2,000	$3,500	$200 + $21 per page	$25 per page
2,001–5,000	$4,800	$200 + $21 per page	$25 per page
5,001–10,000	$7,300	$200 + $21 per page	$25 per page
10,001–15,000	$9,300	$200 + $21 per page	$25 per page
15,001–25,000	$13,000	$200 + $21 per page	$25 per page
25,001–50,000	$14,500	$200 + $21 per page	$25 per page
50,001 and over	$18,000	$200 + $21 per page	$25 per page

*Fees are subject to change. For more information, please contact the MTAS codification department at 865.974.0411.

Ordinance Drafting

Reference Number: MTAS-1042

MTAS has developed procedures for you to follow when drafting ordinances to update your code. Following these procedures will help make the update process go smoothly and ensure that the ordinances passed by the board amend the code as intended. Ordinances that update the code either repeal, replace, or amend existing code sections, or add new sections to the code. Ordinances you adopt must be specific as to the sections and language within the code that is changed. To ensure that updates are done correctly, please follow these procedures and examples when adopting ordinances to update your code. The examples contain sample paragraphs that might appear in ordinances amending a municipal code.

General Considerations

Do not attempt to amend or repeal code sections by using phrases such as “all provisions in conflict with.” This puts the person updating the code in the position of having to guess what the board intended to amend or repeal. You must determine which code provisions are in conflict with the new provisions and specifically repeal or amend them. Specific amendment and repeal of code sections will make updating your code smoother and quicker.

Amending Existing Code Sections

If the amending ordinance adds a new subsection, it is not necessary to write out the entire subsection if the correct section number, section title, and subsection number are included in the ordinance section.

EXAMPLE 1: § 11-502, Anti-noise regulations, is amended by adding subsection (1)(m):

(1)(m) Loudspeakers or amplifiers on vehicles. The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other purposes.

If the amending ordinance changes every occurrence of a word to another word within a section or subsection, it is not necessary to write out the section if the correct section number, section title, and subsection number are included in the ordinance section.

EXAMPLE 2: In § 10-203(3), Running at large prohibited, the word “animal” is changed to “dog” throughout the subsection.

In lengthy sections where long phrases or several sentences are changed, write out the whole text of the section as amended in the ordinance.

EXAMPLE 3: § 18-203, Statement required, of the _____ Municipal Code, is amended to read as follows:

18-203. Statement required. Any person whose premises are supplied with water from the public water supply, and who also has on the same premises a separate source of water supply, or stores water in an uncovered or unsanitary storage reservoir from which the water stored therein is circulated through a piping system, shall file with the superintendent of the water works, a statement of the non-existence of unapproved or unauthorized cross-connections, auxiliary intakes, by-passes, or interconnections. Such statement shall also contain an agreement that no cross-connection, auxiliary intake, by-pass, or interconnection will be permitted upon the premises until the construction and operation of same have received the approval of the Tennessee Department of Public Health, and the operation and maintenance of same have been placed under the direct supervision of the superintendent of the water works.

Repealing Existing Code Sections

If an ordinance repeals a section of the code, it should refer to the specific section that is affected.

EXAMPLE 4: Municipal Code § 11-201, Public drunkenness, is repealed.

Replacing Existing Code Sections

If an ordinance replaces an entire section of the code, it should refer to the specific section to be replaced.

EXAMPLE 5: § 1-104, Ordinance procedure, is replaced by the following § 1-104, Ordinance readings by caption:

1-104. Ordinance readings by caption. Only the caption of an ordinance, instead of the entire ordinance, shall be read on all three (3) readings.

Adding New Sections to the Code

If new provisions are to be added to the code, determine where the material should go in the code. If there is no code section in which to put the new provisions, create a new one. If you have any questions as to the proper placement of a new provision, ask your MTAS consultant.

EXAMPLE 6: § 1-401, Administration of municipal business, is added to the Municipal Code to read as follows:

1-401. Administration of municipal business. The city administrator shall administer the business of the municipality, and perform such duties as may from time to time be designated or required by the board of mayor and aldermen.

The existing sections of that code chapter are re-numbered as follows:

Existing § 1-401, entitled Reports of condition of property, is re-numbered as § 1-402;

Existing § 1-402, entitled Recommended personnel policies, is re-numbered as § 1-403; and,

Existing § 1-403, entitled Other duties, is re-numbered as § 1-404.

EXAMPLE 7: Subsection (11), Payroll deductions, is added to § 4-303 of the Municipal Code to read as follows:

(11) Payroll deductions. Only payroll deductions specifically mandated or authorized by federal or state act may be deducted at each pay period from each employee's pay.

Amendments to Building Codes Adopted by Reference

T.C.A. § 6-54-502(b) states that when a city has “adopted building codes by reference ... except when a municipal governing body by a vote of at least two-thirds of its total membership elects not to incorporate by reference any specific change or amendment, the municipal governing body *shall incorporate by reference all such subsequent changes and amendments thereof, properly identified as to date and source*” [italics mine]. The building codes referred to include the fire code adopted in Title 7 of the municipal code and the codes adopted by reference in Title 12: building code, plumbing code, etc.

You should adopt amendments to these codes each year as the amendments are published. Blanket provisions such as “all future amendments to the building code are hereby adopted” are not sufficient as the statute requires each amendment to be “properly identified as to date and source.”

EXAMPLE 8: § 12-201, Plumbing code adopted, of the _____ Municipal Code, is amended by deleting the words “1999 edition” and substituting “2000 edition.”

Ordinance Numbering

Reference Number: MTAS-1043

General Considerations

Ordinances should be numbered so that the codifier can tell that all ordinances for a given year have been sent for codification. MTAS recommends a numbering system that includes the year of the ordinance as well an ordinance number. Unless your charter provides otherwise, ordinance numbers should be consecutive from year to year; the first ordinance for a given year should have the next logical number from the last ordinance of the preceding year. For example, if the last ordinance of 2003 was "03-42," the first ordinance for 2004 should be "04-43." The first two digits are the year in which the ordinance was passed, and the second two digits are the ordinance number. This system not only provides a quick reference of the year in which the ordinance passed, it also makes it easy for the codifier to tell whether or not any ordinances are missing.

Required Public Hearings

Reference Number: MTAS-163

Although a public hearing is not required when a governing body considers most ordinances, it is a requirement in the following instances:

- Airport – creation of metropolitan airport authority (T.C.A.§ 42-4-104(b)(2))
- Airport – creation of regional airport authority (T.C.A.§ 42-3-104(d))
- Annexation ordinance (T.C.A.§6-51-102(b)(4))
- Annexation – progress report on plan of services (T.C.A.§6-51-108(b))
- Annexation – amend plan of services (T.C.A. § 6-51-108(c))
- Bicentennial authority (T.C.A. § 7-6-104(b))
- Budget – budget estimates in modified council manager cities (T.C.A.§ 6-35-306(a))
- Budget – budget amendments in modified council manager cities (T.C.A. § 6- 5-308)
- Budget adoption (T.C.A. § 6-56-206(b))
- Cable franchise (T.C.A. § 7-59-202)
- Cable service by municipal utility board (T.C.A. § 7-52-602)
- Central business improvement district (CBID) creation (T.C.A. §§ 7-84-204 and 513)
- CBID amendment (T.C.A. §§ 7-84-207(b) and 516)
- CBID assessments and damages (T.C.A. §§ 7-84-409 and 410)
- CBID special assessment (T.C.A. § 7-84-522)
- Certified tax rate (T.C.A. § 67-5-1701)
- Code of ordinances adoption (T.C.A. § 6-54-508(b))
- De-annexation (T.C.A. § 6-51-201(b)(1))
- Economic impact plan by IDC (T.C.A. § 7-53-312(g))
- Enterprise zone establishment (T.C.A. § 13-28-206(b))
- Hospital authority budget (T.C.A. § 7-57-401)
- Hospital authority creation (T.C.A. § 7-57-201(b))
- Incorporation (mayor-aldermanic) (T.C.A. § 6-1-201(a)(3))
- Incorporation (city manager-commission) (T.C.A. § 6-18-103(a)(3))
- Incorporation (modified manager-council) (T.C.A. § 6-30-104(c))
- Inner-city redevelopment district (T.C.A. § 7-84-613)

- Inner-city redevelopment district boundaries (T.C.A. § 7-84-616)
- Inner-city redevelopment district special assessments (T.C.A. § 7-84-622)
- Landfill creation (T.C.A. § 68-211-703)
- Neighborhood preservation program (T.C.A. § 13-5-105)
- Ouster under metro government with population> 400,000 (T.C.A. § 7-2-108(d))
- Ouster of metro airport commission (T.C.A. § 42-4-105(d)(4))
- Ouster of port authority commission (T.C.A. § 7-87-105(f))
- Ouster of metro utility board member (T.C.A. § 7-1-111(c))
- Ouster of utility board member (T.C.A. § 7-52-112)
- Ouster of water/wastewater authority commissioner (T.C.A. § 68-221-605(d)(3))
- Ouster of city manager (T.C.A. § 6-21-101(b)(2))
- Ouster of mayor or commissioner (T.C.A. § 6-20-220(a))
- Port authority creation (T.C.A. § 7-87-104)
- Public housing project (T.C.A. § 13-20-104(e)(2))
- Public housing authority (T.C.A. § 13-20-401 and 416)
- Redevelopment plan tax increment financing (T.C.A. § 13-20-203–205)
- School consolidation report (T.C.A. § 49-2-1201(h)(1))
- School consolidation plan (T.C.A. § 49-2-1206(a)(2))
- School consolidation – multi-county (T.C.A. § 49-2-1254)
- School consolidation plan – multi-county (T.C.A. § 49-2-1257(b)(1))
- Special assessment resolution (T.C.A. § 7-33-303 and 304)
- Street and highway plans (T.C.A. § 54-18-205)
- Street and highway map amendment (T.C.A. § 54-18-206)
- Subdivision regulations by regional planning commission (T.C.A. § 13-3-403(c))
- Subdivision regulations by municipal planning commission (T.C.A. § 13-4-303(c))
- Urban growth boundaries (T.C.A. § 6-58-106(a)(3))
- Water and wastewater authority creation (T.C.A. § 68-221-604)
- Zoning - historic guidelines by historic zoning commission (T.C.A. § 13-7-406)
- Zoning - airport (T.C.A. § 42-6-106)
- Zoning ordinance - regional (T.C.A. § 13-7-303)
- Zoning ordinance (T.C.A. § 13-7-203)

Legislature Declares Ordinances to be Used

Reference Number: MTAS-1015

Legislature Declares When Ordinances, Resolutions to be Used

In 2009, the General Assembly passed a law that sets out enactments by municipal governing bodies that must be done by ordinance. Tennessee Code Annotated § 6-54-512 (2010). Under this law, beginning September 1, 2009, these actions must be accomplished by ordinance:

- A tax levy;
- A special assessment;
- Anything of a permanent nature, i.e., a measure applying to present and future conduct;

- A regulatory or penal measure, i.e., a measure controlling conduct or levying a fine or penalty; and
- Any action required by the general law or the municipality's charter to be done by ordinance.

Other actions may be accomplished by resolution or motion, which is a form of resolution.

Municipal officials and employees should be aware that this is not an earthshaking change. This legislation is an attempt to statutorily re-state and clarify existing law. Most actions of municipal governing bodies already conform to these requirements. The legislature became concerned that some municipalities were seeking charter amendments that allowed many measures traditionally accomplished by ordinance to be done by resolution instead. This law is the legislature's attempt to make sure certain measures will be by ordinance regardless of any charter provision relaxing this requirement. Thus, any tax levy, special assessment, or permanent or penal measure will have to be considered and voted on more than once to be enacted (unless, of course, the municipality's charter is one of the few that allows ordinances to be adopted on only one reading or consideration).

Under this new law, only a general law can override the requirement of accomplishing the listed actions by ordinance. A good example of this is the new "guns in parks" law that allows municipalities to enact by resolution a prohibition on guns in parks and other recreational areas owned or controlled by the municipality. This is a regulatory and penal measure, as well as permanent in nature, but the general law requires that this be done by resolution. Another example is issuing debt or borrowing money. Some municipal charters require that borrowing money be authorized by ordinance. The general law, however, allows all actions necessary to borrow money to be done by resolution, and this general law provision overrides the charter requirement.

On the other hand, a municipal charter provision would not override this new general law requirement for using ordinances. Many municipal charters, for example, include special assessments in a general powers provision that allows the special assessment to be made by resolution or ordinance. Under this new law, the resolution option is foreclosed, and the municipality must use an ordinance to make a special assessment.

This law took effect on September 1, 2009, and applies only to actions taken on and after that date. Municipal officials of cities and towns enacting a tax, a special assessment, a permanent measure, a regulatory or penal measure, or any measure required by the municipality's charter or the general law to be done by ordinance should make sure that if any reading or consideration of the matter takes place on or after September 1, 2009, the enactment is by ordinance rather than by resolution.

Governing Body/Officials

Reference Number: MTAS-173

Click on the topoics listed in this section below for more information

Ouster

Reference Number: MTAS-176

Judicial Ouster

Some Tennessee city charters include ouster provisions, but the only general law procedure for removing elected officials from office is judicial ouster. Cities are entitled to use their municipal charter ouster provisions, or they may proceed under state law.

The judicial ouster procedure applies to all officers, including people holding any municipal "office of trust or profit." (Note that it must be an "office" filled by an "officer," distinguished from an "employee" holding a "position" that does not have the attributes of an "office"). The statute makes any officer subject to such removal "who shall knowingly or willfully misconduct himself in office, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state, or who shall in any public place be in a state of intoxication produced by strong drink voluntarily taken, or who shall engage in any form of illegal gambling, or who shall commit any act constituting a violation of any penal statute involving moral turpitude". T.C.A. § 8-47-101.

T.C.A. § 8-47-122(b) allows the taxing of costs and attorney fees against the complainant in an ouster suit if the complaint subsequently is withdrawn or deemed meritless. Similarly, after a final judgment in an ouster suit, governments may order reimbursement of attorney fees to the officer targeted in a failed ouster attempt. T.C.A. § 8-47-121.

The local attorney general or city attorney has a legal "duty" to investigate a written allegation that an officer has been guilty of any of the mentioned offenses. If he or she finds that "there is reasonable cause for such complaint, he shall forthwith institute proceedings in the Circuit, Chancery, or Criminal Court of the proper county." However, with respect to the city attorney, there may be an irreconcilable conflict between that duty and the city attorney's duties to the city, the mayor, and the rules of professional responsibility governing attorneys. Also, an attorney general or city attorney may act on his or her own initiative without a formal complaint. T.C.A. §§ 8-47-101–102. The officer must be removed from office if found guilty. T.C.A. § 8-47-120.

Crimes Involving Public Officials

Reference Number: MTAS-177

Disqualification for Infamous Crime in Office

A person convicted of a felony, while holding office, that involves the duties of the office is disqualified forever from holding any state or local office. T.C.A. § 40-20-114.

Bribery

Bribing a public official, as well as accepting a bribe by a public official, is a Class B felony. T.C.A. § 39-16-102.

Officials Serving on Other Boards

Reference Number: MTAS-180

Designee on Other Boards and Commissions

A mayor or full-time commissioner who serves on a municipal, county, or regional board, commission, authority, or development district in an appointed, elected, or ex officio capacity may name a qualified person as his or her designee. The designee will have the same powers as the official. This includes the power to vote except at any meeting the official attends. This law does not apply if there is a provision for such a substitution in a charter, private act, ordinance, or general law. It also does not apply to governor-appointed members of boards, commissions, or authorities. T.C.A. § 6-54-112.

Dual Office Holding

Reference Number: MTAS-181

The Tennessee Constitution (Article II, Section 26) prohibits "any person in this state" from holding "more than one lucrative office at the same time." The Tennessee courts have held that this prohibition applies only to holding two state offices, not to holding a state office and a local government office or two local government offices (see *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (1931)). For that reason, a municipal officer may serve in the General Assembly or another local government seat unless otherwise prohibited by law. Some municipal charters forbid dual office holding of various kinds. Such charter provisions generally have been upheld. State and city could properly adopt statutes and ordinances for purpose of preventing an individual from holding public offices which would create a conflict of interest. T.C.A. §§ 6-215, 6-626, 6-627.

Filling City Council Vacancies

Reference Number: MTAS-1016

Every city council will occasionally experience a vacancy. A board member might need to resign after moving his residence out of town. Or perhaps a member of the board has died, leaving an open seat.

Most cities do not have a formal policy to address how vacancies on the city council will be filled. As a result, the process of recruiting and appointing new board members can be emotionally charged and stressful. Recruitment and selection is conducted while the board is under time pressure. There can be confusion about how the appointment is to be made, eligibility requirements and the length of the term the appointee will serve. Such a state of affairs does nothing to improve the board's chances of selecting a good, qualified replacement to fill the opening. To the contrary, these situations can contribute to the appointment of controversial new members who are confused about their duties.

But it need not be this way. Board vacancies, even those created by unfortunate or tragic events, can be managed in a way that will strengthen the governing board or, at least, avoid protracted and divisive debates over the appointment of a successor. A council vacancy can be an opportunity for the community, one that will improve the board, its public image and its ability to address local issues.

This section presents an argument in favor of cities adopting succession plans with two goals in mind:

- Developing a roster of citizens who are familiar with the processes of local government and willing to serve when a vacancy occurs; and
- Implementing a selection process that is open, transparent, fair and results in the placement of qualified persons on the governing board.

Types of Vacancies

Filling board vacancies can be influenced by factors that created the vacancy in the first place.

Council vacancies are most commonly caused by the resignation of a member of the board. In some instances, the board member's resignation is mandatory after he or she has relocated to a new residence out-of-town or outside the district or ward he or she represents; the member may have contracted some debilitating illness that hinders regular attendance at board meetings; and less frequently, board members will sometimes resign their offices to protest board decisions with which they disagree or out of frustration.

The private act charters of some city governments require the board to declare a member's seat to be vacant after the member has missed a given number of council meetings. In some instances, the charter may excuse these absences if they are due to extraordinary circumstances – a prolonged illness, for example. But in other cases, the charter grants no exception for multiple absences from council meetings or a failure of the member to perform his or her duties. In these circumstances, the board may be forced to declare a vacancy even if the member wishes to remain on the board.

The death of a board member, of course, is another cause of vacancy – often a very emotional time for the governing body.

Finally, and much more infrequently, a board vacancy can result from the ouster or removal of a board member. Such actions are ordered by the courts, usually after the board member's conviction for serious misbehavior.

Any of these factors may have a profound effect on the board's selection of a citizen to fill the vacancy. The death of a popular mayor, for example, may result in a desire to fill the vacancy in a manner that memorializes the deceased member. In these circumstances, there may be a call to appoint the deceased member's spouse or some other close associate to fill the vacancy. Such sentiments are, of course, natural and understandable. They do not, however, always result in the best appointment to fill a board vacancy.

Similarly, if the vacancy is the result of an alderman's repeated absences from board meetings, the board may look to recruit a replacement who is known to be available on meeting nights. Here again, an understandable response by the board, but there are other criteria that the board should consider as well.

If the vacancy was created by the abrupt resignation of a frustrated board member, the board may feel it important to select a replacement who will "go along" with the majority and who won't rock the boat too much. This may result in more cordial board meetings, but it is no guarantee that the appointee

possesses the knowledge, skills, abilities and temperament needed to oversee operation of the city government.

The selection of a citizen to fill a board vacancy should not simply be a reaction to the circumstances that led to the creation of the vacancy. Instead, the appointment should reflect the board's agenda for the remaining term of the vacant seat – selecting a person who can help the board meet that agenda.

Consult your charter before taking any action!

Charter Rules re: Vacancies

Reference Number: MTAS-1017

What Are the Rules?

Consult your charter before taking any action!

The city charter usually contains the rules governing the filling of council vacancies. Typically, there is a section in the city charter entitled " Vacancies on the Board" or some such language where this information will be found. The rules vary greatly from city to city and it is very likely that the process used in one city is not acceptable or legal in another.

So, the first rule in filling vacancies is to consult your city charter. Ask your city attorney to review with the board what it must do to return its membership to full strength.

The vacancy provisions in a well-written city charter will include:

- A list of the conditions that require the declaration of a vacancy by the board;
- The amount of time the board has to fill the vacancy;
- The term to be served by the appointed board member; and
- Special conditions involving the vacancy of the mayor.

Vacancies in Cities Having the TCA Mayor-Alderman Form of Government

For those Tennessee cities having the General Law Mayor-Alderman form of government, the procedures for declaring and filling vacancies may be found in T.C.A. § 6-3-107, entitled "Vice Mayor – Vacancies in Office." For these cities, a vacancy in the office of mayor is filled by the vice mayor, who serves in that capacity until the next election, provided such vacancy occurs more than 20 days in advance of the election. Otherwise, the vice mayor would serve until the expiration of the former mayor's term of office.

Aldermanic vacancies are filled by a vote of the remaining board members. Should the vote result in a tie, the presiding officer of the board may vote a second time in order to break the tie.

The charter does not specify how much time a city has to declare or fill an aldermanic vacancy.

Vacancies in Cities Having the TCA Manager-Commission Form of Government

Cities having this form of government must fill city commission vacancies according to the stipulations of T.C.A. § 6-20-110, entitled "Board Vacancies."

This section requires that any vacancy on the board will be filled by appointment of the remaining members of the board, for a term until the next regularly scheduled municipal election, at which point an election is held to fill the remainder of the unexpired term.

This same section of law allows the city to have only one appointed board member at any given time. In those instances where the board already has one appointed member, a subsequent vacancy must be filled by an election.

The law gives these cities 90 days to fill a board vacancy. If after 90 days the vacancy remains unfilled, the city must hold a special election to fill the vacancy. If the vacancy occurs within 75 days of a regularly scheduled municipal election, however, the city may forego the special election and simply fill the vacancy at the regular municipal election.

Vacancies in Cities Having the TCA Modified Manager-Commission Form of Government

The rules for filling vacancies in this form of government are found in T.C.A. § 6-31-201. These rules contain some unique provisions:

- A board member's seat must be declared vacant if the member fails to attend at least 60 percent of all board meetings in any consecutive six-month period.
- A vacancy is created when a board member accepts employment with a state, county, or municipal agency that is filled by public election or "which is remunerative, except as a notary public or member of the national guard."
- If the board is unable to agree upon an appointment within 30 days of the vacancy declaration, the mayor shall make the appointment.
- No appointments to fill board vacancies are to be made within 60 days prior to a regular municipal election.

Vacancies in Cities Having Private Act, Home Rule, Metropolitan Government Charters

The variety in these cities is almost endless and is too numerous to cover here. It should be sufficient to say that prior to declaring or attempting to fill a board vacancy in these cities, the board should carefully review its charter to determine the required procedure.

Resignations and Declarations

Reference Number: MTAS-1018

Resignations and Declarations of a Vacancy

MTAS frequently responds to inquiries concerning the "correct" way for a board member to resign his or her office. Surprisingly, few if any city charters specify a process for its municipal officers to resign their positions.

For any municipal official, the best and most responsible way to resign their position is to put it in writing. Elected officials wanting to leave office in a professional, dignified and helpful fashion would do well to submit a written statement addressed to the mayor and board. As a minimum, the resignation should state the title of the office being resigned, the date on which the resignation is effective and bear the notarized signature of the resigning office member.

It is permissible, but certainly not necessary, for the written statement to enumerate the reasons for the resignation. Usually, a short, politely worded statement is sufficient to dispel any rumors about the causes of the resignation.

Some public officials resign their offices by making a simple verbal statement. Such resignations are sufficient to effectively terminate one's participation on the board, but they are clearly not the most professional and courteous way to do the job. Verbal resignations can be misunderstood by the board, the employees and the general public – including the people who voted for and supported the official. They can create legal headaches for the municipality and should be avoided whenever possible.

In the case of verbal resignations, the municipality should document the names and addresses of any witnesses to the resignation – ideally including other members of the board and/or the city staff and noting the time and place of the resignation. If the verbal resignation was made at a meeting of the board, the city recorder's minutes should clearly state the name and title of the resigning official along with the effective date, if possible.

When does a vacancy legally occur?

Whether a resignation is written or verbal, it does not take effect unless and until the board votes to accept it and declares the seat to be vacant.

As with the resignation itself, it is best that the acceptance and vacancy declaration be made in writing, by passage of a short resolution. The resolution should indicate the name and title of the resigning official, as well as a statement declaring the seat to be vacant. A sample resignation acceptance resolution is included in the addendum to this pamphlet.

The board may accept a resignation by adoption of a motion made at a properly convened meeting. Here again, the motion should specify the name and title of the resigning official. The motion should also declare the resigning official's seat to be vacant. The motion and resulting vote should be clearly stated in the city recorder's minutes.

Once the resignation has been accepted by the board and the office declared vacant, a copy of the resignation resolution or the minutes reflecting the board's acceptance should be delivered to the county election commission.

Problems relating to retracted resignations

It is not unusual for a board member to change his mind and want to retract his resignation. This is most likely to happen when the member resigns in the heat of a contentious debate or after a board decision has not gone his way. It is not unusual for board members to reconsider their resignations the morning after they announced they were quitting.

An elected official may retract his or her resignation at any time before the board has voted to accept it. However, after the board has voted to accept the resignation, it may not be retracted. See *State ex. Rel. v. Bush, Sheriff, 141 Tenn. 229 (1918)*.

The time between an official's resignation announcement and the board's acceptance of it can be crucial. Any delay in accepting the resignation and declaring a vacancy increases the opportunity for the member to change his mind – creating a potentially chaotic situation in city hall. Retracted resignations can lead to confusion and worse in city government. If for no other reason, municipal boards should act quickly to accept the resignation of a member.

Mayoral Vacancies

Reference Number: MTAS-1019

Because their duties and roles differ so widely, the resignations of mayors and aldermen will have different impacts on municipalities.

A mayoral vacancy is far more problematic than the resignation of an alderman. The mayor is often the city's CEO and a vacancy in this office can delay important duties that are essential for day-to-day operation of the local government. There is only one mayor in town. Consequently, when the mayor resigns, there is a 100 percent vacancy in this crucial municipal office. For this reason, cities need to act quickly to fill mayoral vacancies. Delay carries with it opportunities for confusion and serious problems to occur.

The filling of aldermanic vacancies, on the other hand, can be done at a more deliberate pace. When a single alderman resigns his office, the remaining aldermen can carry on and perform the legislative duties. Aldermanic vacancies, therefore, are somewhat less imperative than those involving the mayor.

Many city charters recognize this fact and arrange for the appointment of a vice mayor – who immediately assumes the office of mayor upon the resignation of the mayor. This assures continuity in the administration of the local government. Ideally, mayors keep their vice mayors informed concerning the administrative details and initiatives of their office, so that the vice mayor is "up to speed" if ever called upon to assume the mayor's office.

In some cities, there is no charter provision for the appointment of a vice mayor. In these municipalities, there is no one immediately available to perform the mayor's duties when a vacancy occurs. Consequently, a mayoral vacancy may not be filled for days or weeks while various contenders for the office solicit support for their appointment to the position. In these cities, there is no guarantee that a mayoral vacancy will be filled by someone who has been prepared for the office.

Whether filled by a vice mayor or by any other member of the board, a vacancy in the office of mayor usually results in two board vacancies – the mayor and that of the alderman who is appointed to fill the mayoral vacancy (the exception being those instances where the mayoral vacancy may be filled by persons who are not otherwise members of the board).

For this reason, the first order of business for a newly appointed mayor is to have the board declare a vacancy in his or her former aldermanic seat.

Aldermanic Vacancies

Reference Number: MTAS-1020

In the vast majority of Tennessee cities, a vacancy in the office of mayor must be filled by a member of the municipality's governing board. This means that there are only a handful of people who might conceivably be promoted to fill a mayoral vacancy in your town.

On the other hand, aldermanic vacancies may be filled by any legally qualified resident of the community – meaning that there may be thousands of people who might potentially fill a vacant position. This fact tends to slow down the replacement of a resigning alderman, as the board may want time to advertise, recruit, interview and examine numerous possible contenders.

While the filling of aldermanic vacancies is not usually as crucial as those in the office of mayor, cities must avoid delaying the process longer than is necessary. There are two reasons for this:

- Some city charters establish a strict time limit for the filling of board vacancies. Failure to meet these deadlines would be a violation of the charter that municipal officials are sworn to uphold. In some communities, failure to meet the appointment deadline requires the board to hold a costly special election to fill the vacancy.
- Particularly in those municipalities where board members are elected by district or ward, a prolonged aldermanic absence deprives citizens of the representation to which they are entitled. Citizens likely will not appreciate the passage of important legislation that occurred while they were either unrepresented or under-represented at city hall. Better to delay such actions until after the vacancy is filled, if possible.

Recruitment for Vacancies

Reference Number: MTAS-1022

Click on the topics listed below in this section for more information

Identifying Potential Recruits

Reference Number: MTAS-1021

Municipal boards should always have persons in mind that might be recruited for board service in the event of a vacancy. There need not be an official roster of such persons, but each elected official should be capable of recommending a replacement for his and other's seats.

Even better would be for the board to develop a succession plan – a short resolution that outlines the process the board will follow in filling the vacancy and enumerates the minimum qualifications needed for appointment. The resolution should not (in fact, cannot) force the board to automatically limit the scope of the search, but should encourage an aggressive recruitment in the community.

Cities can often find good candidates to fill board vacancies among the following groups:

- **Former members of the board.** People with prior service on the board might be enticed to come back for a limited time. The board should look for persons who served with distinction and otherwise left their positions with a good reputation. Avoid the appointment of former officials who left under a cloud or whose re-election was overwhelmingly rejected by the voters.
- **Former members of other local governments.** There may be a former county commissioner or school board member in your community who would be willing and able to fill in for a resigning official. Such persons may not be as familiar with municipal issues and processes as former members of the board, but they probably understand the legislative process and how to function in a public capacity.
- **Community leaders.** Try to get recommendations from the local chamber of commerce, civic organizations, educational institutions, neighborhood groups, professional associations, churches and the like. Ask if they know someone who might make a good replacement.

- **City commissions.** There may be persons on the city's planning and zoning commission, board of adjustment, historic preservation committee, park board, etc. who have gained experience in city affairs and who understand how local government works.
- **Graduates of community leadership programs.** Some cities have organizations and programs designed to identify and develop future community leaders. These programs often involve education on local government and issues. If your community has such a program, it would make perfect sense to solicit interest from recent graduates.

Problematic Recruitments

Reference Number: MTAS-1023

While they might otherwise be well qualified for appointment, the board should be careful to avoid filling vacancies with certain types of persons. The voters in your community are free to elect whomever they wish to serve on the board. The performance of an elected official is a reflection of the voters who sent him or her to city hall. But an appointed official is a reflection of the board making the appointment – and the board can expect to be held accountable for making an unacceptable appointment.

Here is a short list of persons to be careful of:

Persons with excess baggage. It was previously mentioned that the board should probably avoid filling vacancies with former board members who left office under a cloud. This may not be entirely fair, but it is a fact of life that selecting such persons can damage the image of the board.

The Runner-up. Sometimes it is suggested that a board vacancy be filled by the person who finished second in the race for the seat in the last election. This should never be the **sole** criteria for the filling of a board vacancy. While such persons should not be automatically excluded from consideration, they likewise should not be the board's automatic choice.

The reason is simple – the voters rejected such candidates. Perhaps the voters' decision was the simple preference for someone else. But it might also be that the voters did not want that specific person to represent them in city hall. To automatically select the runner-up from the last election risks installing someone on the board who is unacceptable to a majority of the voters.

Hell-raisers. It is not unusual for the voters to elect a board member who promises to "shake things up" in city hall. The voters have the right to do this and such candidates are sometimes necessary to wake up a complacent city government.

However, it is another matter when the board appoints such a person to sit on the city council. An elected alderman has a mandate from the voters to pursue the policies on which he campaigned – including those that give the local government a good, hard shaking. But an appointed alderman enjoys no such advantage; and his goals and activities may not reflect the will of the community.

For this reason, it is usually better for vacancies to be filled by persons who are believed to reflect mainstream thought in the community.

Relatives. There is no law against it, but boards should avoid appointing their spouses, kids, or other relatives to fill a board vacancy. Again, it is one thing if the voters make this selection, but it looks unethical if the board makes the decision.

Persons doing business with the city. The local car dealer may have what it takes to be an outstanding city council member – but he won't be able to sell vehicles to the city while he serves as an alderman. Similarly, other local business persons will lose the city's business during their service on the board. The board should make this fact clear to anyone under serious consideration for an aldermanic appointment.

Delinquent tax payers. It will be (or should be) embarrassing for a city council to fill an aldermanic vacancy with someone who has failed to pay his or her taxes for the past several years. The image of the board will be damaged and the newspapers will have a field day. Similarly, the board should be certain that vacancies are not filled by persons who regularly fail to pay their municipal utility bills.

City employees. In the vast majority of Tennessee cities, it is not legal for a city employee to serve as an alderman in that same city. Consequently, city employees should not be considered for filling board vacancies for the city that employs them.

This is by no means a complete list. But most city councils are wise enough to avoid appointing aldermen who have serious police records, drug and alcohol problems, persons who are suing the city, etc.

General Selection Criteria

Reference Number: MTAS-1024

Any person asking for an appointment to the municipal governing board should be willing to submit to an interview for the position. Ideally, such interviews would be held in the council chamber at an open meeting – giving the public the opportunity to see for themselves the persons under consideration for the position.

The purpose of the interview is for the board to ascertain whether the person has the temperament for the position, a political point of view that can be accommodated by the board, and any other skills that might be useful to the city. We will assume here that municipal board members already know how to assess candidates in this regard.

However, in making an aldermanic appointment, the board needs to consider more than a person's political or philosophical orientation, values or experience. Three other important factors should not be overlooked – time, temperament, and residency.

- **Time considerations.** Most persons would be surprised at the amount of time an alderman spends performing his or her duties. Does the person understand the amount of time required to successfully serve as a board member? Is he/she available at the times when the board regularly meets? Does the person have the time to attend the training sessions and conferences that other board members do? Is the person willing to attend the annual TML Conference, the legislative conferences, MTAS training, etc.
- **Temperament.** This may be a little harder to ascertain, but before appointing anyone to the city council, the board should have a firm understanding of precisely why the person wants the position. A wise mayor once said that some people run for office to do something; while others run for office to be something. A candidate who cannot clearly, succinctly say why they want a seat on the board is not as likely to be interested in accomplishing city goals.
- **Residency.** Everyone knows that an appointee to the town governing board must be a resident of that town (but again, check your charter – exceptions may be possible). But sometimes there may be a question about an appointee's actual place of residence. It will be embarrassing to the governing board to learn – after the fact – that it has appointed an out-of-town resident to fill a vacancy on the board. For this reason, cities should also ask potential appointees for official identification (driver's license, voter registration, etc.) that proves their residency. And, in those municipalities where aldermen are elected by ward or district, check to make sure that the proposed appointee lives within the district he wants to represent.

Making the Appointment

Reference Number: MTAS-1025

It is emphasized again that your city charter should be reviewed before attempting to fill any vacancy on the governing board. The charter may require that vacancies be filled by passage of an ordinance or resolution. In many cities, the charter simply requires that appointments are made by a majority vote of the remaining board members, with no reference to an ordinance or resolution. In some cities, the charter will prohibit the board from making an appointment – and require that a special election for the office is held.

If the board has the authority to fill vacancies, it is a good idea to do so by adoption of a written document – an ordinance or, preferably, a resolution. As in the case of submitting a resignation, a written document should eliminate any doubt about who, specifically, is being appointed to the board.

As a minimum, the appointment resolution should indicate the following:

- The title of the position being filled--with reference to the person who resigned the position and created the vacancy;

- The date on which the vacancy was declared, with reference to the vacancy declaration resolution number, if applicable;
- The term to be served by the appointed official (i.e., until the next municipal election, until the end of the completed term, until a special election is held, etc.); and
- The full, legal name of the person being appointed. To avoid any confusion, it also would be wise to include the appointee's residential address.

Other Details

Though not legally required, it is a good idea to publicly announce the appointment of a new alderman to the board. This can help the community avoid any confusion about who is in charge of the local government.

- Work up a short press release for distribution to the local news media. A "just the facts" sort of statement should suffice – one that includes the appointee's name, the vacancy he or she is filling, and the length of the term remaining to be served. Of course, a statement from the mayor or the appointee also can be inserted into the release.
- The appointee should be introduced to the municipal staff – particularly the department heads and supervisors. At the least, this will involve the circulation of a memo containing the same information as the press release. Better, of course, is having the appointee personally introduced to the employees in an informal meeting.
- Give the appointee the same documents and support that is extended to any newly-elected board member. This will include copies of minutes from recent board meetings, the city charter, and the municipal code.
- Notify state and federal agencies that regularly correspond with individual members of the board. This will include MTAS, the Tennessee Municipal League, and state and county representatives.
- Notify the county election board of the filling of the vacancy.

Avoiding Pitfalls

Reference Number: MTAS-1026

The appointment of a new alderman can be a controversial decision in any community – particularly if the board is facing issues on which it is evenly divided. The appointment of a new alderman in these instances can tip the balance of power one way or the other – by an unelected member of the board, no less.

In other instances, there may be several qualified candidates under consideration for the appointment – with board members concerned about offending those candidates who are not selected for the job. These sorts of conditions can contribute to a poor decision-making process by the board.

- **Passing the buck: Part I – Delegating the Decision.** It is certainly acceptable for the board to seek and obtain recommendations from the public concerning the appointment of a new alderman. But governing boards must realize that they cannot delegate the final appointment decision to any other person or group. Governing boards should avoid the temptation to have a citizens' panel "recommend" an aldermanic appointment – with the board serving merely as a rubber stamp. The responsibility for the appointment rests with the governing board and it will be held accountable for its decision, regardless of any recommendations it might have received.
- **Passing the buck: Part II – An Unnecessary Special Election.** As previously discussed, some municipal charters require that board vacancies must be filled by means of a special election. For these cities, there is no alternative and the governing board may not simply appoint someone to fill a vacancy. However, in those cities where the charter authorizes the governing board to fill vacancies, the board must not shrink from its duty. Special elections are expensive – and wasteful for those municipalities where the board is authorized to make the appointment at no cost to the taxpayers.

- **Playing politics.** There is no legal prohibition against filling a vacancy with a person who is known to have political ambitions – someone who may see the position as a "stepping stone" to higher or more permanent office. Still, appointing such a person to fill a vacancy can be risky. Some people are likely to feel that the appointee has an inside track in the next general election, inasmuch as he or she will be able to run as an incumbent. It is best to let such people win the election on their own and to avoid appointing them to office.

A Final Word About Appointed Board Members

Once the new appointee takes the oath of office, he or she becomes a fully authorized member of the governing board – vested with all the rights, privileges, and responsibilities as any elected member of the board. They should not be viewed in any way as a lesser member of the board. Appointees may not be fired by a governing board that becomes disappointed with them.

Sample Resolutions

Reference Number: MTAS-1027

Click on the topics listed below in this section for more information

Vacancy from Death

Reference Number: MTAS-1028

EXAMPLE OF A VACANCY DECLARATION RESOLUTION RESULTING FROM DEATH OF AN ALDERMAN

RESOLUTION NO. _____

A RESOLUTION OF THE ANYTOWN, TENNESSEE, BOARD OF MAYOR AND ALDERMEN TO DECLARE VACANT THE SEAT OF ALDERMAN JOHN DOE.

WHEREAS, Section 10 of the Anytown private act charter stipulates that the Board of Mayor and Aldermen shall declare that a vacancy on the Board exists if the Mayor or an Alderman dies while in office; and,

WHEREAS, Alderman John Doe has recently passed away.

NOW, THEREFORE, in recognition of these facts be it resolved by the *Anytown* Board of Mayor and Aldermen:

1. Vacancy declared. The Anytown Board of Mayor and Aldermen hereby declares the aldermanic seat held by John Doe to be vacant as of the date of this resolution.

2. Vacancy to be filled within thirty (30) days of this Resolution. Pursuant to Section 10 of the Anytown town charter, the Board of Mayor and Aldermen shall, within thirty (30) days of the date of this Resolution, appoint a qualified person to fill this vacancy.

3. Condolences extended to family and friends of Alderman Doe. The Board of Mayor and Aldermen acknowledges Alderman Doe's many years of service to the community and extends its deepest sympathy to his family and friends.

PASSED AND APPROVED THIS 7th DAY OF APRIL, 2011, BY A ROLL CALL VOTE OF THE ANYTOWN BOARD OF MAYOR AND ALDERMEN.

_____
MAYOR

ATTEST: _____
City Recorder

Vacancy from Resignation

Reference Number:

MTAS-1029

EXAMPLE OF A VACANCY DECLARATION RESOLUTION RESULTING FROM RESIGNATION OF AN ALDERMAN

RESOLUTION NO. _____

A RESOLUTION OF THE ANYTOWN, TENNESSEE BOARD OF MAYOR AND ALDERMEN TO ACCEPT THE RESIGNATION OF ALDERMAN JOHN DOE AND DECLARING AN ALDERMANIC VACANCY ON THE BOARD OF MAYOR AND ALDERMEN.

WHEREAS, Article IV, Section 11 of the *Anytown* private act charter stipulates that a vacancy shall exist on the Board of Mayor and Aldermen if the Mayor or an Alderman resigns or moves his residence from the Town; and

WHEREAS, Alderman John Doe has advised the Board of Mayor and Aldermen that he has moved his residence from the Town of *Anytown*; and

WHEREAS, Alderman John Doe has submitted his written resignation to the *Anytown* Board of Mayor and Aldermen, and;

WHEREAS, the Anytown Board of Mayor and Aldermen respectfully wishes to accept the resignation submitted by Alderman John Doe.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF *ANYTOWN*, TENNESSEE AS FOLLOWS:

I. The resignation of Alderman John Doe from the Anytown Board of Mayor and Aldermen is hereby accepted.

II. The Board of Mayor and Aldermen hereby declares the aldermanic seat formerly held by John Doe to be vacant.

PASSED AND APPROVED THIS 29TH DAY OF MARCH, 2011 BY A ROLL CALL VOTE OF THE ANYTOWN BOARD OF MAYOR AND ALDERMEN.

_____
MAYOR

ATTEST: _____
City Recorder

Aldermanic Appointment Resolution

Reference Number: MTAS-1030

EXAMPLE OF AN ALDERMANIC APPOINTMENT RESOLUTION

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF *ANYTOWN,* TENNESSEE APPOINTING MARY SMITH TO FILL THE UNEXPIRED ALDERMANIC TERM OF JOHN DOE.

WHEREAS, Alderman *John Doe* has submitted his resignation from the *Anytown* Board of Mayor and Aldermen; and

WHEREAS, the *Anytown* Board of Mayor and Aldermen has adopted a Resolution to accept the resignation of John Doe from the Board of Mayor and Aldermen; and

WHEREAS, Section 10 of the *Anytown* City Charter requires the Board of Mayor and Aldermen to appoint a qualified citizen to fill the aldermanic vacancy created by John Doe's resignation, and that such appointee shall serve the remainder of the vacant term of office or until the next regular general election, whichever shall occur first; and

WHEREAS, *John Doe*'s term of office was scheduled to expire with the election scheduled for November 4, 2014 and the next regularly scheduled general election is scheduled for November 6, 2012; and

WHEREAS, *Mary Smith of 1320 South Columbus Street* in *Anytown* has agreed to fill the Aldermanic vacancy created by *John Doe*'s resignation.

NOW, THEREFORE, IN CONSIDERATION OF THESE FACTS, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF *ANYTOWN*, TENNESSEE, AS FOLLOWS:

1. Appointment to the Board of Mayor and Aldermen. Mary Smith is hereby appointed to the position of Alderman in the City of *Anytown*, Tennessee.

2. Term of Office. Pursuant to Section 10 of the *Anytown* Private Act Charter, *Mary Smith* shall serve as Alderman until after the next regular general election, scheduled for November 6, 2012 and until her successor to office has been elected and qualified.

3. Effective Date. This Resolution shall be in full force and effect from and after its date of passage by the Board of Mayor and Aldermen of the City of *Anytown*.

PASSED AND APPROVED THIS 12TH DAY OF AUGUST, 2011 BY A ROLL CALL VOTE OF THE *ANYTOWN* BOARD OF MAYOR AND ALDERMEN.

_____

MAYOR

ATTEST: _____
City Recorder

Preparing for Media Interviews

Reference Number: MTAS-1031

Sooner or later, almost every municipal official will have a bad experience resulting from an interview with a news reporter. There are standard complaints: The reporter asked unfair or “loaded” questions, good responses were deleted from the story, or the reporter blew minor points out of all proportion.

A critical factor leading to unsuccessful news media interviews is often the failure of public officials to understand the role of the news media in a free, democratic society. The news media do not serve as the local government’s public relations arm, and it is not a reporter’s job to polish the city’s image or that of any individual municipal official. Quite to the contrary, journalists are trained to question authority, to be wary of the official explanations of government, and to pick apart proposals made by public officials. They are under no obligation to be “fair” to the government officials they interview and are especially leery of officials whom they may suspect want to slant the news in their favor.

The relationship between city hall and the news media is, almost by definition, an adversarial one. While this does not mean the relationship cannot be friendly and satisfying, a smart city official understands and accepts the obligation of the news media to ask tough questions, to probe into areas the government may find embarrassing, and to expose city problems.

Perhaps the single most critical factor leading to a bad news media interview, however, is lack of adequate preparation by the interviewee. Municipal officials wanting to give winning interviews to the press must plan and prepare for them. Successful interviews do not just happen.

The fact that you may have mastered the subject of the interview does not, by itself, assure a successful outcome. There are many examples of bad media interviews given by intelligent public officials who are experts in their field. Similarly, the fact that you may have a cordial relationship with the interviewer does not guarantee a successful performance. This is especially true in radio and television interviews, where the microphone or the camera is all that stands between you and the audience.

However unfair it may be, most of the responsibility for a successful media interview rests with the person being interviewed. However unfair it may be, most of the responsibility for a successful media interview rests with the person being interviewed. True, the reporter or interviewer *should* be fair and professional, ask the “right” questions, and otherwise lead the interview to a successful conclusion. But if the reporter fails in this regard, it is usually the interviewee who looks bad. For this reason, the public official who truly understands the importance of successful media interviews will take responsibility for making them successful.

This section will help municipal officials prepare for news media interviews and provide strategies for successful outcomes.

Part I - Know What You Are Getting Into

Reference Number: MTAS-1032

Before Agreeing to an Interview Request

Municipalities have an obligation to provide requested information to the news media. This does not mean, however, that city officials have to submit themselves for every interview request they receive. Before agreeing to give an interview, you have a right to know what you’re getting into and how the interview will be used. Here’s a checklist of questions for which you should know the answers before you agree to sit down and talk to a reporter:

1. Who is conducting the interview? At what media source do they work?
You have a right to know with whom you’ll be talking and for whom they work.

2. What topics are to be discussed in the interview? Will the interview be limited to these topics or will others be introduced?
It is generally a good idea to limit the topics of an interview to one or two subjects. This will let you better prepare for the interview and avoid discussions of subjects for which you may not be fully prepared.

3. Why was this particular topic chosen? What prompted the request for an interview?
You should be aware of the context in which the interview will be taking place, the incidents or developments that may have prompted the interview request. This will let you address these specific incidents or developments and avoid speaking in more general or hypothetical terms.

4. Am I the right person for this interview? Are there other city officials who could more properly respond to the interviewer's questions?
You should give interviews only on those subjects with which you have considerable familiarity. When dealing with technical information, legal issues, or other complicated subjects, it may be best to refer the reporter to someone on the city staff having special expertise on the subject. Alternately, you may ask the reporter if you can have one of these staff members sit with you during the interview. Be careful if the reporter is reluctant to allow you this opportunity.

5. Who else will be present at the interview?
You should always know the names of other people who will join you in the interview. While it is normal for a reporter to interview others for a story, having a third party present during your interview could lead to on-camera debates, confrontations, etc. If a reporter wants to bring a third party to your interview, find out what the purpose is—and be careful.

6. When will the interview take place?
You are entitled to be interviewed at a reasonably convenient time. Try to be flexible and take into account the reporter's availability and deadlines, but avoid giving late-night interviews. Keeping in mind the subject matter to be discussed, insist on having sufficient time to prepare for the interview.

7. Is the interview going to be conducted in person or over the telephone? If the interview is to be in person, where will it occur?
Try to hold the interview on your turf: in your office or in some other area of city hall offering a friendly, dignified environment. It may be appropriate at times to meet on the reporter's turf—in the studio or at the newspaper office—depending upon your comfort level with the environment. It is generally a good idea to avoid giving interviews in public places (i.e., restaurants, coffee shops, and other locations where onlookers cannot be controlled) or where the surroundings could be misinterpreted or misleading.

8. Will the interview be live or on tape?
A live interview is like tightrope walking without a net. The opportunity to pause before responding to a question is limited, as are the chances to glance at notes. This is not to say that you should avoid live interviews at all costs, but understand that a live interview requires more preparation than one that is taped. For live interviews, some reporters may give you the questions in advance to avoid delays in answers on camera.

9. How much time is thought to be needed for the interview?
Is the reporter asking for 15 minutes of your time? Or several hours?

10. When will the story run?
News stories usually run within a day or two of your interview meaning information you provide to the reporter is likely to be relatively fresh when the story appears. However, you should realize magazine articles and certain newspaper and television feature stories might not be released for weeks or even months after the interview. By the time the story appears, the facts surrounding your story may have changed making it appear you are either poorly informed or, worse, lying. Be careful about accepting interviews that will not be aired or printed until far into the future. Ask that your interview be conducted closer to the release date. Or, request a brief follow-up interview close to the release date so you can verify that the information is still up to date.

Sometimes you may be called by a reporter who wants an immediate interview with you by telephone with no other warning or appointment. If you are familiar with the reporter, it may be best to ask for a few minutes to prepare yourself, returning his call a short time later after you have had time to prepare. If you are not familiar with the reporter, explain that you will be busy for a few minutes and that you will call back. Not only will this give you a few minutes to prepare, but your call back will help determine if the "reporter" is legitimate.

To help maintain good relations with the news media, and as a matter of courtesy, city officials should respond promptly to a reporter's request for an interview. If any of the answers to the above questions are not satisfactory, it may be best to decline the request or to suggest changes.

Part II - Preparing for Interviews

Reference Number: MTAS-1033

Practice Makes Perfect

The most important part of your preparation is to set clearly stated goals for the interview. What is it you want to say? What information do you want to convey? What is your point? It is not a good idea to sit for an interview without first defining your purposes for granting it in the first place.

It is usually best to limit your interview to no more than two or three important points, and summarize each of these points in a single sentence. It may be helpful to make a list of the points you want to make in your interview, along with the single sentence summation of each. Have something you can take with you and occasionally glance at during the interview. The key here is to take control of the interview and stay "on message." Otherwise, the reporter may take you into areas where you don't wish to go.

We see this concern for staying on message at the highest levels of government today. The president, cabinet members, and other political speakers frequently have their message printed on the backdrop behind the stages from which they are making speeches or giving interviews. The message is always short and simple ("Fiscal Responsibility" or "Helping Our Kids" or some such slogan), and the speaker is careful not to deviate from this message.

Municipal officials do not need a backdrop with their daily message stenciled on it in order to give effective interviews. However, good interviews result when you have a point and stick to it.

Additionally, your interview preparation should include the following:

1. Anticipate the hardest questions you might be asked by the reporter.
It is not likely the reporter is going to ask you a lot of cream-puff questions. Ask yourself what questions you would least like to answer during the interview, then develop good responses to each of them. Maybe the reporter won't pose these questions to you during the interview, but you'll be ready for them if they come up. Can't think of any hard questions you might be asked? Talk to your staff or other people you trust who may be willing to play "devil's advocate."

2. Develop a list of questions you are likely to be asked, then have someone pose these questions to you out loud.
Practice giving your answers out loud. Sometimes a tape recorder can be helpful in this phase of the preparation. Listen to your voice as well as to the words in your answers. Are you staying on message? Talking too fast (or too slow)? Pay attention to your choice of words, and weed out technical jargon, poor use of English, and statements that may be offensive to people you do not wish to offend. Have your friends critique your answers and pay attention to their suggestions for improvements.

3. Identify rumors and be prepared to deal with them.
It is a good idea to use some of your interview time to dispel rumors that are circulating in the community and that may have a negative impact on your agency. Don't wait for the reporter to raise these issues. It's OK for you to raise them on your own and then refute them.

4. To the maximum extent possible, try developing answers that are inclusive and are likely to expand the number of citizens who will agree with you. Avoid confrontation.
It is better to use words like "we need" rather than "I want" or "our residents" rather than "my advisers." Your answers should reflect that you are in contact with your constituents and that you have paid attention to their concerns. Most important, avoid making personal attacks on other people in your community. You can point out where other ideas or proposals may not be as good as yours, but avoid criticizing the motives or characters of your opponents. However good it may feel to "zing" your opponents, it will not advance your perception in the community as a reasonable person.

5. Develop a background information package to be given to the reporter at the interview.
An information package, containing pertinent information and quotations, can help assure that the reporter "gets the story" and does not misquote or otherwise misunderstand the points you want to make. The package allows you to explain your proposals in more detail than is usually possible in most media interviews and can contain statistics, charts, photographs, and other documents that may not come up in the interview. The media are under no obligation to use this material, but many reporters will appreciate the value of this assistance and will refer to it in their story.

6. Develop examples or analogies that underscore the point you want to make.
An analogy ("This problem is very similar to…") can help simplify complex issues for the public. Similarly, you should try to use real life examples that serve to highlight your points.

7. Determine the need for props.
It may help you make your point to have a prop available during the interview; use an object or device that illustrates the point you are trying to make. If you are trying to convince the public of the need to purchase more modern fire trucks, for example, it might be best to conduct the interview in front of the old fire trucks in the fire hall letting the interviewer (and television viewers) see for themselves why new trucks are needed.

8. Have a decent photograph of yourself available to the newspapers.
Look at your driver's license photograph. Is it a good one? Now imagine this photograph will accompany the article. Newspapers are notorious for taking snapshots that are very unflattering; bad camera angles and poor lighting can make a city official look like an ogre. It is best to avoid letting the newspaper's photographer take your portrait, a picture you are not likely to review before it appears in the press. Instead, provide a recent photo of yourself to the reporter for use in the story, one taken by a professional photographer or at least a snapshot that does not make you look too scary.

Preparations for Television Interviews

Reference Number: MTAS-1034

Preparing for TV interviews is especially crucial. With television, not only will your constituents be judging the answers you give to the reporter, but they will also be assessing your appearance. Unless you are careful, a television camera can be very unkind to an interviewee.

1. Pay attention to your clothing.
On TV, mayors should look like mayors and council members should look like council members: professional. It is usually best to appear on camera in Sunday-go-to-meeting clothes. Shirts and ties for the men, business dresses for the women. No baseball caps or T-shirts. TV cameras are not friendly to the color white or to patterned materials, so select solid color clothing if possible.

2. Pay attention to your grooming.
Television lights tend to exaggerate certain facial features. For this reason, unless they are growing a beard, men should shave before appearing on TV. Shortly before the interview, check your hair in the mirror. If the interview is taking place right after lunch, use a mirror to check your teeth. Perspiration seems to show up well on TV cameras so have a handkerchief handy to dry your face prior to going on camera.

3. Pay attention to your body language.
If you will be standing for your interview, practice talking with your arms relaxed at your side. If you will be seated, plan to sit upright with your hands in your lap or on the armrest of your chair. Avoid reclining. Never cross your arms in front of your chest (it looks defensive or combative). Unless the subject is gravely serious, try to smile.

4. Pay attention to the background.
Especially if the interview is taking place on your turf, try to select a site that will improve your appearance. Avoid standing near a bare, light-colored wall, which might cause shadows that exaggerate the size of your head or your hair. Similarly, standing near or against a window is likely to put your face in an unflattering shadow. Good backdrops include flags, bookcases, flowers, and other nonreflective materials. In good weather, it may be advisable to conduct your interview outdoors, not in the direct light of the sun but under overcast skies or in shaded areas.

5. Pay attention to camera angles.
In a TV studio, this is not usually something you will need to be concerned with. The studio crew will know how to set up the camera shots for your interview. Outside the studio, you'll want to pay attention to this important factor.

In the minutes before the interview, as the camera is being set up, try to assure that your face and the camera will be on the same level. Do not allow the camera to be placed higher than your face. You'll look small. Similarly, try to avoid having the camera placed so low that you'll look like a giant.

Camera angles that are “straight on” are usually not very flattering (again, think of your driver’s license photo). If possible, try to position yourself at a slight angle to the camera (keeping your “best side” to the camera, of course).

Part III - During the Interview

Reference Number: MTAS-1035

The first rule when dealing with any reporter on any subject is to never, never, never lie. Never.

The careers and reputations of innumerable public servants have been permanently destroyed when they told a lie to a news reporter. Once a reporter realizes he or she has been lied to, you will have no peace. It is always better to admit to a painful truth on a one-time basis than to have the news media discover a lie and spend the next several months exposing it, slowly extracting the truth. Remember, tell the truth and tell it first.

The second rule for dealing with reporters is to clearly understand the meaning of the term “off the record.” Simply stated, nothing you say to a reporter is ever off the record. The term has no legal definition and means only as much as the reporter wants it to. For all practical purposes, you should assume that every word you say to a reporter is going to appear in their story and carefully watch your words.

Sometimes public officials will make the mistake of giving a reporter “confidential” information, telling the reporter only afterward that his remarks were “off the record.” This approach does not obligate the reporter in any way. Instead, it alerts the reporter that the comments may be especially controversial and worthy of further investigation.

In other instances, a reporter may attempt to extract information from a public official by offering to keep the information “off the record.” Again, “off the record” is a vague term that can mean many things. The offer may mean the reporter will not print (or broadcast) the remarks made by the speaker, or it might simply mean that the remarks will be broadcast but not attributed to the speaker. Either way, this can have embarrassing results for the public servant.

The best strategy during a media interview is to tell the truth and insist to the reporter that every question and answer is on the record.

Here are some other techniques that will improve the quality of your media interviews:

1. Stay in control of the interview.
You don’t have to wait until the reporter brings up a subject you wish to discuss. You can raise the issue on your own. This is especially important if the reporter is not asking questions that are “on message.” It’s OK to politely change the subject to the points that you have decided to make. Don’t let the interviewer take you into areas that are not important or not what you want to discuss. Remember, you should know the discussion topics beforehand. If the questions veer from the predetermined subjects, stay “on message” and remind the interviewer of the topics you agreed to discuss.

2. Repeat yourself.
Keep making your major points over and over. Emphasize your message numerous times so your points won’t be missed or misinterpreted by the viewer or reader. Reiterate the things you want the public to understand about your topic. When a message is told repeatedly, citizens tend to remember and accept what they have heard.

3. Keep your answers short and avoid talking too much.
With radio and television news media in particular, an hour-long interview is likely to result in a story that lasts no more than a couple of minutes on the air. Most of your answers will be reduced to sound bites lasting no more than five or 10 seconds. A two-minute answer is not going to be included in the final cut of the story. Keep your answers brief and to the point. Otherwise, your comments may be used out of context or in a damaging way.

4. It is also risky to keep talking after providing a brief answer during an interview.
Intentionally or not, some reporters have a habit of arranging periods of silence between their questions during which time some interviewees feel the need to keep talking. It is during these periods that the speaker can get off message, blurting out things never intended to be said. It is not your responsibility to keep the discussion moving during an interview; let the reporter do that for you.

5. Do not read your prepared remarks—especially on television.
Your answers should appear natural and not as if you are reading from a script. This is true especially in television interviews, where reading a prepared statement almost always looks forced and unnatural.

6. Do not accept a reporter's characterizations of your remarks.
Sometimes a reporter will attempt to summarize the answers you made to a particular question, and the characterization may not be consistent with what you said. It is OK to disagree with the reporter in these instances and you should immediately correct any mischaracterizations of your remarks. This can be done politely, but there should be no doubt left that the reporter's characterizations are wrong. Don't let the reporter put words in your mouth.

7. Beware of false choices offered by reporters.
"If you aren't going to raise taxes, which city programs will you be cutting?" Be careful not to take the bait in this trap. The question assumes only two possible choices. There may be numerous alternatives to raising taxes or cutting programs. Politely explain to the reporter what those other alternatives might be.

8. Avoid making jokes when the subject is serious.
The public expects its public servants to be serious and businesslike. Attempts at humor detract from a serious image. Worse, if the joke falls flat, the speaker will look foolish. There are occasions when humor may be called for, but such instances are rare.

9. Avoid the use of jargon and technical terms.
The public is not always familiar with the various acronyms associated with government. Do not assume people listening to your interview on the radio will know what TDEC, OSHA, FOIA, EPA, FLSA, FMLA, or MTAS mean. Speak to the average citizen, not to bureaucrats and technicians.

10. Don't guess at the answers.
Never attempt to guess the answer to a question. Unless your guess is correct, your answer may appear to be untruthful. It's OK to tell the reporter that you don't have the information needed to provide an accurate answer, along with the offer to provide the answer shortly after the interview. It's OK to say you are not qualified to answer a question if the subject is outside your area of expertise or responsibility.

11. Don't answer hypothetical questions.
This is dangerous territory. Avoid answering "what if" questions. Months (or hours) after the interview, the question may no longer be theoretical and your answer may not fit the situation. Do not make predictions or assumptions.

12. Don't lose your temper.
This is especially true for television interviews where your temper will be shown in tight close-up shots of your face. But it is true for other media, as well. Keep your cool and don't let them see you sweat.

13. Eliminate distractions.
Turn off your cell phone and pager. If the interview is in your office, have your calls answered by a secretary. Radios (including police radios) and televisions should be turned off.

14. In television interviews, keep your eyes on the reporter.
It is not good to look at the microphone during a TV interview, nor will you look very good if you look directly into the camera. Instead, it is best to focus on the person conducting the interview.

15. During television and radio interviews, avoid being overly familiar with the reporter.
When dealing with local reporters with whom you are familiar, it may be OK to call the reporter by his or her first name while on the air. When dealing with reporters you do not know well, especially celebrity journalists, it is more professional to call the reporter "Mr. Brokaw" rather than "Tom." Otherwise, the public may think you're showing off. Worse, the viewer may see the interview as biased or as a publicity piece.

16. Always be positive and never attack or ridicule anyone.
If your message is a good one, the public can be sold on it with a positive, clearly articulated interview. Attacking or ridiculing opponents often backfires and can detract from the message you want to convey. Sell yourself and your ideas rather than tearing down another person.

17. Deal with hostile questions.
The reporter may ask a question that challenges your intelligence or your integrity, perhaps hoping that you'll respond in kind. Don't take the bait. Try to rephrase the reporter's question in a more positive way before answering it. Explain why your proposal or your position is good for the community, and avoid explaining why it's not bad. Emphasize the positive.

18. Assume that every microphone is on.
From the moment you enter the presence of a reporter, watch your words carefully. Assume all microphones are on and recording your every word. Just because you do not see a microphone does not mean one is not present.

19. Show compassion.
When dealing with bad news, make an effort to express your concern for the victims (for example, people laid off when a factory closes, people hurt in accidents, people denied public benefits, etc.) Let the public see that you have a heart and that you care about the people in your community.

Part IV - Know the Things You Cannot Change

Reference Number: MTAS-1036

Regardless of the relationship you have with the local news media, there is one fact that will *always* be true: The news media will always have the last word about you. You will never have the audience that newspapers, radio, and television (and now, the Internet) have available to them, nor will you ever meet as many of your constituents in person during your lifetime as the news media will reach in a single day.

If for no other reason, therefore, it is best to try to get along with the news media in your community. You don't have to like reporters, nor must you allow them to be abusive or rude. But because they will always have the last word and because they speak to every person in your town, it is in your best interest to try to cultivate a professional relationship with the news media. Treat them as you would want to be treated and perhaps they will do the same, although there is no guarantee.

While you cannot change them, here's a short list of simple truths about news reporters of which you should be aware:

1. Reporters usually already know the answers to the questions they ask.
The fact that a reporter asks you questions does not mean he or she does not already know the answers. Reporters often ask questions about things they already know. In these instances, the point of the question is not to learn new information, but to determine what you know—and to assess your truthfulness.

2. Your opponents, rivals, and enemies will also be interviewed.
You cannot reasonably expect reporters to ignore differences of opinion that may exist in your community. In most cases, reporters will actually seek out the opinions of your opponents in an effort to present a balanced news story. When interviewing these rivals, the reporter may use your responses in an attempt to provoke a reaction that will be interesting on camera or in the next day's newspaper.

3. Your friends, supporters and teammates will also be interviewed—and may damage your position.
You may be the only person in city government authorized to give interviews to the press, but reporters are not obliged to respect this policy. Before or after your interview, reporters are likely to talk with other city officials and employees about any particular subject, and they will be quick to note any inconsistencies or conflicts in the story. This can be especially unnerving for mayors, city managers, and public information officers who have worked hard to deliver the city's message, only to hear it contradicted by other, usually anonymous, city employees.

4. The interview is not over until the reporter leaves your presence.
Just because the reporter has turned off his tape recorder and is packing up to leave your office, do not assume the interview is over. Anything you say to the reporter as he or she is walking out the door may be added to the interview. Avoid making post-interview remarks.

5. The headlines are not written by the reporter.
A reporter may make every effort to accurately quote and describe his interview with you. Once the article is written, however, the story is handed over to various editors who attach a headline designed to attract the readers' attention. It sometimes happens that the headline does not accurately reflect the content of the reporter's story.

6. The reporter's story will be edited by others at the paper.
Just as the headlines are written by others, a reporter's story is reviewed and amended by various supervisors, editors, and the like. Articles often are shortened to fit the available newspaper space or air time. Oftentimes, the deleted parts of the story are precisely those parts containing your best material.

7. Giving interviews to student newspapers is not a guarantee of safety.
High school and college newspapers will often call local government offices to arrange interviews with various city officials. Do not assume such "minor league" publications will not require adequate preparation and care. Young, inexperienced, apprentice reporters are much more likely to misquote and mischaracterize your remarks than the full-time professionals from the "real" newspaper in town. Furthermore, a lot of people read these school papers.

When you speak to a reporter, you are speaking to the citizens in your community. You may not like or trust the reporter, but do not be confused about who you are really speaking to during an interview. The public can figure out who is being a professional during an interview and who is not. The best way to deal with a tough reporter is simply to let the public see you at your best.

City Council Meeting: Robert's Rules of Order

Reference Number: MTAS-1006

Most cities and towns have adopted *Robert's Rules of Order, Newly Revised* (RONR) as their guideline for parliamentary procedure. The book is updated every ten years with the decennial census. The latest version is the newly revised 11th edition. If there is a contradiction between RONR and your city charter, code, or ordinance, your locally adopted legislation prevails over RONR. If you policies are silent on any of the issues in RONR, and your municipality has adopted RONR, then RONR will dictate how to proceed.

Order of Business

Reference Number: MTAS-1007

1 Mayor: *The meeting will come to order.* (The mayor determines if there is a quorum present. The recorder enters in the minutes the names of those present.)

2. *The recorder will read the minutes of the last meeting.* The minutes are read. *Are there any corrections to the minutes?* Corrections are suggested without a motion or vote if there is no disagreement. If there is disagreement, then the elected official motions to amend the minutes. Otherwise the mayor states: *If there are no (further) corrections, the minutes stand approved as read (as corrected)*.

3. *We will have the report of the officers* (such as a financial report by the recorder), *boards, standing committees, and special committees.* A motion is made to adopt the financial report. If a committee report contains a recommendation, the reporting member (usually the chairman of the committee) moves that the recommendation be adopted. Otherwise, the report is filed without action.

4. *Is there any unfinished business?* This is sometimes referred to as "old business" but the proper term is "unfinished business" and includes such things as second readings of ordinances. Action is completed on any business not settled when last meeting was adjourned. If there is no unfinished business, the mayor states there is no unfinished business and moves right into new business.

5. After the unfinished business...*Is there any new business* (ordinances on first reading, regulations, resolutions)?

a. Any council member may introduce an ordinance, resolution, or regulation.

b. Ordinances on first reading are usually read by caption only, with the introducer explaining the contents.

c. Ordinances on second/final reading should be read in full. Charters or by-laws of some municipalities may prohibit the amendment of certain ordinances after second reading. Any changes or amendments otherwise are offered at this time. By charter, some cities are required to pass ordinances on three readings. Each new ordinance, regulation, or resolution is read, discussed, adopted, postponed, referred to a committee, or otherwise disposed of before the next one is proposed.

6. After all the business is completed...*Is there anything for the good of the order?* This is the opportunity for elected officials to make any announcements or informal observations about the work of the municipality.

7. *If there is nothing further, I'll entertain a motion to adjourn.* A member states: *I move to adjourn*. The motion requires a second and majority vote. If the motion to adjourn fails, the meeting continues. If the motion passes, the mayor states: *The ayes have it, and the meeting is adjourned*.

Handling the Motions

Reference Number: MTAS-1008

1. Council member addresses the chair. *Mr./Madam Mayor, I'd like to have the floor to make a motion.*

2. Mayor recognizes speaker: *Council member _____, you have the floor.*

3. Council member: *I move the adoption of ordinance 2017-002 on first reading.*

4. Another council member: *I second the motion*, or simply *Second*.

5. Mayor states the motion: *The motion to adopt ordinance 2017-002 on first reading has been made by Council member _____ and the motion has been seconded …Is there any discussion?* This opens the floor to debate on the ordinance. The person who made the motion has the right to discuss it first. Discussion must be addressed to the mayor. The motion may be changed by amendment (another motion). If the council does not wish to take final action on the motion, it may dispose of the motion in some other way (most typically by postponing definitely [usually to the next meeting], or postponing indefinitely [which kills the motion]).

6. Under RONR decorum rules, members are allowed to speak on a motion only twice, and not for a second time until all members have had a first opportunity.

7. Debate then begins and may end one of two ways:

a. A member may close (end) debate by requesting the floor from the mayor, then saying: *I move the previous question*

Another elected official seconds the motion, *I second the motion* or *Second*.

The mayor states: *There is a motion and a second to move the previous question which is adopting ordinance 2017-002 on first reading. Those in favor of ordering the previous question say "aye"... those opposed say "no"*

The mayor states the outcome of the vote: *The ayes have it and the motion carries* or *The nos have it and the motion fails, so debate continues*.

If the motion carried, the mayor immediately moves into taking a vote on the ordinance: *Those in favor of adopting ordinance 2017-002 on first reading say "aye"... those opposed say "no"*

b. The mayor may close debate by stating: *If there is no more discussion on the motion to adopt ordinance 2017-002 on first reading, let's move to a vote.* If no one opposes (there is silence) then the mayor states: *All those in favor of adopting ordinance 2017-002 on first reading say "aye." Those opposed say "no."* If an elected official speaks out against closing debate, then debate continues.

8. Otherwise, the mayor states the outcome of the vote: *The "ayes"* (or "nos") *have it. The motion is carried* (or defeated).

Amendments to Change Motions

Reference Number: MTAS-1009

1. After a main motion is made and seconded, and debate has begun, an elected official may suggest a change to the legislation with another motion: *I move to amend the ordinance by…* and striking out, inserting, or substituting a word, phrase, sentence, or paragraph.

2. Another member: *I second the motion to amend.*

3. Mayor: *It has been proposed to amend Ordinance _____ to read as follows…* The mayor states the main motion and amendment so it is understood how the amendment changes the legislation. The amendment changes the motion. The amendment is handled in the same way as a main motion.

4. The mayor opens the floor to debate on the amendment: *Is there any discussion?*

5. Question: *If there is no further discussion, the amendment is...*

6. Vote: *All in favor of the amendment...* The mayor announces the outcome: *The amendment is carried* (or defeated). *The motion now before the governing body is…* (the motion plus the amendment, if carried).

Keeping Council Minutes

Reference Number: MTAS-1010

Record what is done, not what is said. Keep the notes together in a special notebook.

Organize notes into clear, concise statements and record them in a permanent minute book to be read at the next meeting.

The first paragraph of the minutes should contain:

1. the kind of meeting (regular, special, adjourned regular, or adjourned special)
2. the name of the governing body
3. the date, time and location of the meeting
4. the fact that the mayor and recorder were present, or, in their absence, the names of the people who substituted for them
5. whether the minutes from the previous meeting were read and approved - as read, or as corrected - and the date of that meeting if it was anything other than a regular meeting.

Record each motion as a separate paragraph.
The last paragraph should state the time of adjournment.
The minutes should be read and approved by the council at the next regular or adjourned meeting.
Minutes should be signed by the recorder.

Ordinances should be kept in an ordinance book and resolutions in a resolution book. Both ordinances and resolutions should be numbered consecutively. If separate books are kept for ordinances and resolutions, the minutes need show only a caption and space left for the number assigned when passed on final reading. Minutes should show book and page number where the ordinance/resolution is recorded.

The Recorder's Job

Reference Number: MTAS-1011

The recorder's duties under RONR are to:

1. Keep a record of the minutes
2. Keep on file all committee reports
3. Keep the official membership roll and call role where it is required

4. Make the minutes available
5. Furnish the governing body with documents necessary for them to do their jobs
6. Furnish delegates with credentials (not applicable to small governing bodies)
7. Sign all certified copies of acts of the governing body
8. Maintain minute books and have the current minute book on hand at each meeting
9. Send notice of the next meeting to the elected officials
10. Prepare the agenda (order of business) for each meeting for the use of the mayor
11. Call a meeting to order in the absence of the mayor and vice mayor and manage the election of a mayor pro tem for that meeting.

The Mayor's Duties

Reference Number: MTAS-1012

Mayoral duties regarding meetings, according to RONR are to:

1. Open the meeting at the appointed time and call the meeting to order and declare if a quorum is present or not
2. Announce the order of business (agenda)
3. Recognize elected officials who are entitled to the floor
4. State and put to vote all questions on motions that legitimately come before the governing body; and to announce the result of each vote
5. Protect the governing body from obviously dilatory motions by refusing to recognize them
6. Enforce the rules of debate, order, and decorum
7. Expedite business in every way compatible with the rights of members
8. Decide all questions of order
9. Respond to inquiries of elected officials regarding parliamentary procedure
10. Sign minutes, ordinances and resolutions
11. Declare the meeting adjourned

In addition, the mayor should have at each meeting a copy of the municipality's charter, a copy of its parliamentary authority, a list of all committees and their members, and an agenda (order of business).

Final Form of Minutes

Reference Number: MTAS-1013

The final minutes:

- should be typewritten or written legibly in permanent ink;
- should have a wide margin for corrections;
- should not be defaced. Corrections should be made by bracketing the erroneous portions and stating corrections in the wide margin;
- should be kept in book form. If in longhand, a bound book should be used; if typewritten, use a loose-leaf, lock minute book. If using the latter, number each page; and
- should be signed, when approved, by the recorder and mayor.

Rules for Handling Motions

Reference Number:

RULES FOR HANDLING MOTIONS

Types of Motions	Order of Handling	Must Be Seconded	Can Be Discussed	Can Be Amended	Vote Required	Vote Can Be Reconsidered
MAIN MOTION						
To present a proposal to assembly	Cannot be made if any other motion is pending	Yes	Yes	Yes	Majority	Yes
SUBSIDIARY MOTIONS						
To postpone indefinitely action on a motion	Has precedence over above motion	Yes	Yes	No	Majority	Affirmative vote only
To amend (improve) a main motion	Has precedence over above motions	Yes	Yes	Yes, but only once	Majority	Yes
To refer a motion to committee (for special consideration)	Has precedence over above motions	Yes	Yes	Yes	Majority	Yes
To postpone definitely (to a certain time) action on a motion	Has precedence over above motions	Yes	Yes	Yes	Majority	Yes
To limit the discussion to a certain time	Has precedence over above motions	Yes	No	Yes	2/3	Yes
To call for a vote (to end discussion at once and vote)	Has precedence over above motions	Yes	No	No	2/3	No
To table a motion (to lay it aside until later)	Has precedence over above motions	Yes	No	No	Majority	No
INCIDENTAL MOTIONS						
To suspend a rule temporarily (e.g., to change the order of business)	No	Yes	No	No	2/3	No
To withdraw or modify a motion (to prevent a vote or inclusion in minutes)[i]	These motions have precedence over motion to which they pertain	No	No	No	Majority	Negative vote only
To rise to a point of order (to enforce rules or program)[ii]		No	No	No	No vote, chairperson rules	No
To appeal from the decision of the mayor (must be made immediately)		Yes	Yes*	No	Majority	Yes
PRIVILEGED MOTIONS						
To call for orders of the day (to keep the meeting to the program or the order of business)[ii]	Has precedence over above motions	No	No	No	No vote required[iii]	No
Questions of privilege (to bring up an urgent matter such as noise, discomfort, etc.	Has precedence over above motions	No	No	No	Majority	No
To take recess	Has precedence over above motions	Yes	Yes**	Yes	Majority	No
To adjourn	Has precedence over above motions	Yes	No	No	Majority	No
To set next meeting time	Has precedence over above motions	Yes	Yes**	As to time & place	Majority	Yes
UNCLASSIFIED MOTIONS						
To make a motion from the table (to bring up a tabled motion for consideration)[iv]	Cannot be made if any other motion is pending	Yes	No	No	Majority	No
To reconsider (to bring up discussion and obtain a vote on a previously decided motion)[v]		Yes	Yes*	No	Majority	No
To rescind (repeal a decision on a motion)[vi]		Yes	Yes*	No	Majority or 2/3	Yes

[i] The mover may request to withdraw or modify his/her motion without the consent of anyone before the motion has been put to council for consideration. When the motion is before the council and if there is no objection from a member, the mayor announces that the motion is withdrawn or modified. If anyone objects, the request is put to a vote.

[ii] A member may interrupt the speaker who has the floor to rise to a point of order or appeal, to call for orders of the day, or to raise a question of privilege.

[iii] Orders of the day may be changed by a motion to suspend the rules (see Incidental Motions).

[iv] A motion can be taken from the table during the meeting when it was tabled or the next meeting.

[v] A motion to reconsider may be made only by those who voted on the prevailing side. A motion to reconsider must be made during the meeting when it was decided, or on the next succeeding day if the meeting is carried over.

[vi] It is impossible to rescind any action taken as the result of a motion, but the unexecuted part may be rescinded. Notice must be given one meeting before the voter is taken. If voted on immediately, a two-thirds vote to rescind is necessary.

* Yes, when motion is debatable.

** Yes, if no motion is pending.

Floor Action

Reference Number: MTAS-994

Much the same procedure takes place on the floor of the two houses as in committees. The floor calendar is published in advance. Lobbyists do their work. At the time for hearing the bill, the sponsor will be recognized to explain the bill and answer questions. Any amendments that have been added to the bill in committee also must be approved by the entire House or Senate. The rules provide that the chair (or designee) of the committee that added the amendments must explain them. Usually, the chair designates the sponsor of the bill to explain these amendments. They also may be proposed from the floor. Amendments are voted on before the bill. To pass on third consideration, the bill must receive the votes of a majority of all members to which each House is entitled (50 in the House of Representatives and 17 in the Senate).

Bills must pass both houses in identical form. The process described above for committee action and floor action doesn't occur simultaneously in both houses. A bill may work its way through the Senate weeks or even months before consideration in the House. Often, by the time a bill has passed the first House, all concerned parties have been heard, agreements have been reached, and necessary amendments have been made. Thus, the amended version of the bill passes one House while an unamended or different version might get to the floor of the second. When this happens, the version that passed in the first House is substituted for the version still on the floor of the second House. The sponsor in the second House motions to "substitute and conform" the bill to the one that has already passed. The motion to substitute and conform generally is approved, and the same version of the bill passes both houses.

Sometimes, however, different amendments are added to a bill in the committees or on the floors of the two houses. If two different versions do pass the two houses, each must approve amendments added by the other. On rare occasions where the two houses cannot agree, a Conference Committee, composed of members of both houses, may be created to reconcile differences. The recommendations of the Conference Committee also must be approved by the two houses. Once the bill is passed in identical form by both houses, it is engrossed and signed by the speakers of the House and Senate and sent to the governor for consideration.

Elections

Reference Number: MTAS-182

Elections - State Provisions

In 1972, the General Assembly enacted a comprehensive law to regulate all elections T.C.A. Title 2. Its apparent intent was to override provisions in private act charters and other conflicting general laws relating to the conduct of municipal elections, including certain provisions in T.C.A. Title 6, Chapter 53, that pertain to municipal elections. Title 6, Chapter 53, has been amended several times since 1972, however, and some of those amendments apply to current municipal elections and appear to be legally sound. For that reason, both T.C.A. Title 2 and Title 6, Chapter 53, should be consulted and reconciled with respect to questions regarding municipal elections.

The introductory provisions of T.C.A. Title 2 include the following:

- "The purpose of this title is to regulate the conduct of all elections by the people so that ...internal improvement is promoted by providing a comprehensive and uniform procedure for elections ..." (T.C.A. § 2-1-102(3)); and
- "All elections for public office, for candidacy for public office, and on questions submitted to the people shall be conducted under this title" (T.C.A. § 2-1-103).

The statutes outline the procedures and conduct of all city elections, and municipal officials should seek guidance from these laws and from those governing county election commissions.

Conducting Municipal Elections

Reference Number:

MTAS-184

Dates and Changes

In election law, there is no uniform date for municipal elections as there is for county elections. Private act charters prescribe election dates, and a private act municipality may change its election date by changing its charter. In addition to any existing charter provisions, a private act municipality may change its election via ordinance to coincide with the August or November general election. The ordinance changing an election date may extend terms for no more than two years as necessary to meet the general election date. T.C.A. § 6-54-138.

The general law mayor-aldermanic charter provides that the first election after the incorporation of the municipality shall be held no later than 62 days following the incorporation election; and it authorizes the board of mayor and aldermen to change its election date by ordinance to coincide with the August or November general election. The ordinance changing an election date may extend terms for no more than two years as necessary to meet the general election date. T.C.A. § 6-1-207, T.C.A. § 6-3-104.

The general law city manager-commission charter provides that the first election of commissioners shall be the fourth Tuesday following the incorporation election, and it authorizes the board of commissioners to change the election date by ordinance to coincide with the August or November general state election. The ordinance changing an election date may extend terms for no more than two years as necessary to meet the general election date. T.C.A. § 6-20-102.

The general law modified city manager-council charter provides that the first election of council members after the incorporation of the municipality shall be the fourth Tuesday following the incorporation election, and it authorizes the city council to change the election date by ordinance. The ordinance changing an election date may extend terms for no more than two years as necessary to meet the general election date. T.C.A. § 6-31-102.

Qualifying Deadline for Municipal Election

Reference Number: MTAS-284

T.C.A. § 2-5-101(a)(3) requires candidates in municipal elections held with the August general election to file their nominating petitions by noon on the first Thursday in April, and candidates in other municipal elections to file their nominating petitions no later than noon on the third Thursday in the third calendar month before the election.

T.C.A. § 6-53-101 states, "The county election commission of each county shall hold, upon no less than one hundred twenty (120) days' notice, an election for mayor ... and other officers...." T.C.A. § 6-53-101(a)(2) requires municipalities that have changed the term of office of an elected official to file a certified copy of the ordinance changing the term with the county election commission at least seven days before the deadline for filing the notice of election under T.C.A. § 2-12-111.

Early Voting

Reference Number: MTAS-289

Early voting applies to all elections, including municipal elections. T.C.A. §§ 2-6-101, *et seq.* The time and the place for early voting is not more than 20 days nor fewer than five days before the date of the election, at the office of the county election commission. However, in the case of a municipal election in which there is no opposition for any of the offices involved, the period is not more than 10 or fewer than five days before the election. Furthermore, with the exception of Nashville and Memphis, early voting is abolished in a municipal election not held in conjunction with a primary election, the regular August or November election or any special primary or general election for state or federal office if there is no opposition for any of the offices at issue.

The time during which the county election commission offices must be open for early voting is set in T.C.A. § 2-6-103 and includes certain Saturdays. However, municipalities of less than 5,000 in population may set the Saturday schedule. Certain rules govern the hours that election commission offices are open for early voting in municipal elections in the principal city in counties with a population of more than 150,000.

T.C.A. § 2-6-112 also provides that, at the request of the municipality, the county election commission must establish a satellite voting location for municipal elections, where the election is held at times other than the regular state general elections in August and November. The municipality is responsible for the cost of the satellite location.

The county election commission may choose not to have early voting at the election commission office when a municipality with a satellite voting location requests this. T.C.A. § 2-6-112.

Determination of Residency

Reference Number: MTAS-287

Determination of Residence for Voter Registration Purposes

Any United States citizen who is or will be 18 years old before the next election date and is a Tennessee resident may register to vote unless he or she has been legally disqualified. T.C.A. § 2-2-102, T.C.A. § 2-2-104, T.C.A. § 2-22-122. The registrar follows T.C.A. § 2-2-122 to determine if a person is a Tennessee resident.

Residency Requirements Applicable to Persons Living in a Newly Annexed Area

People living in newly annexed territory have the same rights as any other people living in the city, as if the annexed area "had always been part of the annexing municipality". T.C.A. § 6-51-108(a). Therefore, any residency period in the annexed area would apply toward residency requirements for voting and running for municipal office.

Municipalities should consider election deadline dates when they annex territory. Municipalities that annex territory must provide the appropriate county election commission with:

- Maps depicting the area;
- A copy of the annexation ordinance denoting wards or districts, if applicable; and
- A copy of the census taken for the annexation, if available. T.C.A. § 2-2-107 (c).

Notice to County Election Commission of Certain Changes

The legislative body of each municipality must provide the county election commission an updated list of any changes to house, road, or street names and numbers every six months. T.C.A. § 7-86-127.

Non-resident Property Owners' Voting Rights

Tennessee statutes recognize non-resident property owners' voting rights in municipal elections if such rights are provided by municipal charter or general law. Separate voter registration for non-resident property owners is required. Therefore, non-resident property owners who also are registered to vote anywhere in Tennessee must register as property rights voters before registration closes for an upcoming municipal election, just as other voters must register. T.C.A. § 2-2-107, T.C.A. § 6-53-102. A municipality where non-resident property owners have voting rights may, via ordinance, require non-resident voters to vote absentee ballot via certified mail. Such an ordinance must be passed and filed with the county election no less than 60 days prior to an election where utilized T.C.A. § 2-6-205.

Presumably, only those people whose names appear on deeds or tax rolls would be eligible to register as non-resident property owners. T.C.A. § 2-2-107(a)(3) provides that no more than two persons are entitled to vote based upon ownership of an individual tract regardless of the number of property owners. If a partnership owns property, only partners named on the deed have non-resident voting rights. Corporate owners have no vote because the Tennessee Constitution and election laws authorize voter registration of only natural people. Article IV, Section 1, and T.C.A. § 2-2-102.

The general law city manager-commission charter provides that a person eligible to vote in municipal elections solely because of non-resident ownership of real property is not eligible for election as a commissioner T.C.A. § 6-20-103.

Nominating Petitions

Reference Number: MTAS-288

Nominating petitions must be signed by the candidate and 25 or more registered voters eligible to vote for the office the candidate is seeking. T.C.A. § 2-5-101(b)(1). Such petitions may not be issued more than 90 days before the qualifying deadline. T.C.A. § 2-5-102 (b)(5).

The county election commission office is required to furnish nominating petition forms for municipal elections. T.C.A. § 2-5-102(b)(1). Candidates in a city that lies in two or more counties must file their original nominating petitions with the chairperson or administrator of elections in the county where the city hall is located. They also must file certified duplicates of the petition with the commissions of all the counties in which the city lies. T.C.A. § 2-5-104.

If candidates miss a filing deadline or if their petitions do not contain the signatures and home addresses of at least 25 registered voters eligible to vote for the offices the candidates are seeking, their names may not be printed on the ballot. T.C.A. § 2-5-101(c).

T.C.A. § 2-5-101 and T.C.A. § 2-2-204 provide procedures for qualifying additional candidates if another candidate is nominated but dies or withdraws before the election.

Candidate Qualifications

Reference Number: MTAS-185

Tennessee's "Little Hatch Act" limits the political activity of certain government employees but does not apply to municipal employees. T.C.A. §§ 2-19-201, *et seq.* Some municipal charters and ordinances contain restrictions on the political activities of municipal employees; however, they have been superseded by T.C.A. § 7-51-1501. That statute expressly gives local government employees the same rights as other Tennessee citizens to engage in political activities and to run for state and most local government offices.The law contains one significant exception: Local government employees may not run for the local governing body unless authorized by law or local ordinance.

Only the names of "qualified" candidates may be on the ballot. T.C.A. § 2-5-204(a). In general, charter provisions requiring up to one year of residency in the city to qualify for office are valid. A person may not use a business or commercial address as a residence for purposes of the election code unless the person provides evidence of the residential use of the property. T.C.A. § 2-2-122.

No minimum age qualification for membership on the municipal governing body may be greater than 21 years at the time the member takes office. A minimum age of 18 is fixed to be a candidate for such an office. However, a minimum age between 18 and 21 for assuming office may be fixed by private act, charter provision, or ordinance, if authorized by charter. This law does not apply in a county with a metropolitan form of government. T.C.A. § 6-53-109.

Political Ads and Signs

Reference Number: MTAS-187

A political advertisement must state the name of the person or group funding it and whether the candidate authorized the ad. T.C.A. § 2-19-120.

Within certain counties, it is illegal for anyone to attach posters, show cards, advertisements, or devices (including election campaign literature) on poles, towers, or public utility company fixtures – whether publicly or privately owned – unless legally authorized. T.C.A. § 2-19-144. Candidates are required to remove all election signs on highway rights of way and on other publicly owned property within three weeks after an election, but there is no penalty for failing to do so. T.C.A. § 2-1-116. In addition to these provisions, many cities have local ordinances regulating posters, advertisements, and devices on public property.

Referenda Elections

Reference Number: MTAS-188

The Tennessee Supreme Court has held that "the right to hold an election does not exist absent an express grant of power by the legislature." (See Brewer v. Davis, 28 Tenn. 208 (1848); McPherson v. Everett, 594 S.W.2d 677, 680 (Tenn. 1980).) The Tennessee Attorney General's office has consistently concluded under those cases that referenda are elections for which there must be statutory authorization. Op. Tenn. Atty. Gen. No. 86-146; 95-013.

Local Referenda Permitted

The following referenda are authorized under Tennessee law:

- General obligation bonds (T.C.A. §§ 9-21-201, *et seq.*);
- Liquor retail sales (package stores) or selling alcoholic beverages for consumption on the premises (T.C.A. §§ 57-3-101, *et seq.*, T.C.A. §§ 57-4-101, *et seq.*);
- Annexation (T.C.A. §§ 6-51-104, *et seq.*);
- Local sales tax (T.C.A. §§ 67-6-701, *et seq.*);
- Adopting or surrendering the general law mayor-aldermanic charter (T.C.A. § 6-1-201), the city manager-commission charter (T.C.A. § 6-18-104), and the modified city manager-council charter (T.C.A. § 6-30-106);
- A private act passed by the General Assembly (Article XI, Section 9, of the Tennessee Constitution);
- Creating an emergency communications (911) district (T.C.A. §§ 7-86-101, *et seq.*);
- Recalling a city official if the charter permits (T.C.A. § 2-5-151);
- Adopting or amending home rule charters (Article XI, Section 9, of the Tennessee Constitution);
- Popular election of the mayor in cities incorporated under the uniform city manager-commission charter (T.C.A. § 6-20-201(b));
- Consolidating city and county government (T.C.A. §§ 7-1-101, 7-3-312, and 7-21-101, *et seq.*);
- Increasing the number of commissioners from five to seven for cities with a population greater than 20,000 incorporated under the uniform city manager-commission charter (T.C.A. § 6-20-101); and
- Approval of the issuance of retail liquor licenses to alcoholic beverage manufacturers (T.C.A.§ 57-3-204).

Referendum Election Procedures

The procedures for holding any type of referendum election generally are in the law that authorizes the election. If the legislation does not address a particular type of referendum, the provisions of the Election Code apply. Additionally, T.C.A. § 2-3-204 frequently applies, and T.C.A. § 2-12-111 and T.C.A. §§ 2-6-101, *et seq.*, always apply. Elections regarding local option sales tax pursuant to T.C.A. § 67-7-706(a) shall be conducted according to T.C.A. § 2-3-204.

Resolutions, ordinances, or petitions requiring elections on questions to be held during the general election or the presidential primary must be filed with the county election commission at least 75 days before the election T.C.A. § 2-3-204(b).

The city attorney is required to summarize in 200 or fewer words any question exceeding 300 words that is to be submitted to the voters T.C.A. § 2-5-208(f).

T.C.A. § 2-5-208 requires any question submitted to the people in a local referendum to be followed by the words yes and no so the voter can mark an X opposite the proper word. Any question must be worded so that yes indicates support for and no indicates opposition to the measure.

Financial Disclosure/Conflict of Interest

Reference Number:

MTAS-189

All candidates for the chief administrative office (mayor), any candidates who spend more than $500, and candidates for other offices who pay at least $100 a month are required to file campaign financial disclosure reports. Members of a municipal or regional planning commission must also file a campaign disclosure report. Civil penalties of $25 per day are authorized for late filings. Penalties up to the greater of $10,000 or 15 percent of the amount in controversy may be levied for filings more than 35 days late. It is a Class E felony for a multi-candidate political campaign committee with a prior assessment record to intentionally fail to file a required campaign financial report. Further, the treasurer of such a committee may be personally liable for any penalty levied by the Registry of Election Finance. T.C.A. §§ 2-10-101–118.

Contributions to political campaigns for municipal candidates are limited to:

- $1,000 from any person (including corporations and other organizations);
- $5,000 from a multi-candidate political campaign committee;
- $20,000 from the candidate;
- $20,000 from a political party; and
- $75,000 from multi-candidate political campaign committees.

The Registry of Election Finance may impose a maximum penalty of $10,000 or 115 percent of the amount of all contributions made or accepted in excess of these limits, whichever is greater. T.C.A. §§ 2-10-301–310.

Each candidate for local public office must prepare a report of contributions that includes the receipt date of each contribution and a political campaign committee's statement indicating the date of each expenditure. T.C.A. §§ 2-10-105, 107.

Candidates are prohibited from converting leftover campaign funds to personal use. The funds must be returned to contributors, put in the volunteer public education trust fund, or transferred to another political campaign fund, a political party, a charitable or civic organization, educational institution, or an organization described in 26 U.S.C. 170(c). T.C.A. § 2-10-114.

Conflict of interest disclosure reports by any candidate or appointee to a local public office are required under T.C.A. §§ 8-50-501, *et seq.* Detailed financial information is required, including the names of corporations or organizations in which the official or one immediate family member has an investment of more than $10,000 or 5 percent of the total capital. This must be filed no later than 30 days after the last day legally allowed for qualifying as a candidate. As long as an elected official holds office, he or she must file an amended statement with the Tennessee Ethics Commission or inform that office in writing that an amended statement is not necessary because nothing has changed. The amended statement must be filed no later than January 31 of each year. T.C.A. § 8-50-504.

Recall Elections

Reference Number: MTAS-190

Recall elections are available only if the municipality's charter authorizes them. Procedures for recall elections are found in T.C.A. § 2-5-151, but these provisions do not apply in Nashville-Davidson County. Recall petitions must contain one or more specific grounds for removal. T.C.A. § 6-53-108.

Petitions for Recall, Referendum, or Initiative

T.C.A. § 2-5-151 outlines procedures for cities having charter provisions for recall, referendum, or initiative. The statute contains extensive rules, including:

- A registered voter must submit the prepared petition and question to the county election commission, which must certify within 30 days whether it is proper;
- The individual who files has 15 days to fix any problems;
- The petition must include the question, the printed name of each signer, the date of the signature, and the signatures of at least 15 percent of the city's registered voters;
- The completed petition must be filed within 75 days after certification by the election commission and at least 60 days before the election; and

- Individuals have eight days after filing to remove their names from the petition.

Since July 1, 1997, a municipality has been allowed to enact or re-enact controlling charter requirements relative to the number of signatures required and the 75-day deadline after election commission certification of the petition. T.C.A. § 2-5-151.

At-Large Electoral Systems

Reference Number: MTAS-1092

So you want to adopt or continue an at-large election system where all the members of the governing body are elected from the municipality as a whole. Or, you want to adopt a combination district / at-large election system in which the majority of members of the governing body would be elected from districts and one or two would be elected at-large. Will either system survive a challenge on the ground that it discriminates against minority voters?

Well, yes and no. Local governments have successfully defended a tiny number of totally at-large systems and at least one combination district / at-large system (by agreement of the parties).

However, if the local government has a significant minority population and a less-than-pristine record of race relations, any at-large component of its electoral system is skating on thin ice. Besides, win or lose, the defense of such suits is horrendously expensive (if the city loses, it also pays the plaintiff's attorney's fees).

If that answer is not particularly helpful in individual municipalities, there is a good reason for it. The reason lies in the nebulous legal tests against which at-large and combination at-large / district electoral systems are measured that have grown out of the history of the statutes and cases in this area.

The Civil Rights Act of 1965 (act) banned a large number of election practices considered by the Congress to discriminate against minorities in violation of the Fifteenth Amendment to the United States Constitution. These practices include literacy tests, educational or knowledge tests, moral character tests, and proof of qualifications through registered voters or other classes. A major amendment to the act, passed in 1975, required many states and local governments to provide bilingual election forms, including ballots.

Section 2 of the act, which basically tracked the language of the Fifteenth Amendment, provided that:

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4 (f)(2).

In applying Section 2, the federal courts disagreed on whether a Section 2 violation was triggered by election practices that were adopted with the intention to discriminate against minority groups or simply the effect of the practice.

The United States Supreme Court settled the disagreement in *Mobile v. Bolden*, 446 U.S. 55 (1980). That case involved a challenge under the Fourteenth and Fifteenth Amendments to the U.S. Constitution, and Section 2, of the at-large election system of the City of Mobile, Alabama. The city was governed by a commission consisting of three commissioners elected at-large. The commission was established in 1911, but no black had ever been elected under that system.

In fact, until 1973 none had ever sought office. However, the Supreme Court turned aside the challenge on the grounds that the Plaintiffs had not proved the election system was a "purposeful device to further racial discrimination." Curiously enough, the Court reasoned that purposeful discrimination in establishing the system could not be proven because in 1911 blacks in Alabama were, for all practical purposes, disenfranchised; therefore there was no need on the part of the City of Mobile to adopt an at-large system to discriminate against them.

In response to Bolden's requirement that proof of intentional discrimination was essential to an election practice claim under both the Fourteenth and Fifteenth Amendments to the U.S. Constitution, and Section 2, the Congress in 1982 amended Section 2 by writing into it an "effects test." The intent and effect of that amendment was to overturn the "intentional test" of Bolden under Section 2. In fact, the Senate Judiciary Report on the bill whether " a challenged practice or structure, prevents plaintiffs from

having an equal opportunity to participate in the political process and to elect candidates of their choice" (emphasis in mine).

As amended in 1982, Section 2 presently reads as follows:

a. No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in Section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
b. A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political process leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that it members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered; Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population (emphasis is mine).

At-large election systems, then, are not per se unconstitutional or a violation of Section 2. They, like other election practices, stand or fall on a "totality of circumstances" test under Section 2.

However, because intentional discrimination is still essential to the proof of a voting rights discrimination case under the Fourteenth and Fifteenth Amendments to the United States Constitution, and Section 2 requires only that the effect of the election practice in question be discriminatory, the latter has become the primary vehicle for at-large elections system challenges.

The only U.S. Supreme Court case that interprets the present Section 2 is the landmark case of *Thornburg v. Gingles*, 106S.Ct. 2752 (1986). In striking down most of the redistricting plan of the North Carolina General Assembly on the grounds that it diluted the vote of black citizens in certain districts, the Court announced a three-pronged test for proving a minority voter dilution claim under Section 2. A plaintiff must show that:

- The minority is sufficiently large and geographically compact enough to constitute a majority in a single-member district.
- The minority is politically cohesive.
- The majority votes sufficiently as a block to enable it — in the absence of special circumstances, such as an unopposed minority candidate — usually to defeat the minority's preferred candidate.

The Court went on to say that, "Stated succinctly, and bloc voting majority must usually be able to defeat candidates supported by a politically cohesive geographically insular minority group" (emphasis is mine).

If a local government possessed no other information than the history of Section 2, it should be on notice that if it has a significant minority population in identifiable pockets, an at-large election system or a combination district / at-large is automatically suspect.

The Voting Rights Act of 1965, as amended, generally, and Section 1 of that act, as amended after Bolden, in particular, express a clear intention on the part of Congress to snuff out any kind of election practice that operates to the detriment of minority groups. At-large provisions created or preserved in such cities after 1982 are invitations to legal trouble even if they were, or are, established with no discriminatory intent in mind.

The reason it is difficult to answer the question of whether a proposed district / at-large combination in a particular municipality would withstand challenge is that there are no simple rules or standards against which to measure any particular at-large or combination district / at-large election system, either before its adoption or after is challenged.

Even the U.S. Supreme Court in Gingles could not agree on what kind of evidence will satisfy the proof of a violation of each prong of the three-pronged test. Under the "totality of circumstances" test, the determination of whether a system complies with Section 2, can require some incredibly complicated and expensive analysis. In theory, that should be the plaintiff's problem; in reality, it is usually municipalities that end up on the complicated, expensive defensive in most at-large cases.

However, one ironclad rule can be observed in the at-large electoral system cases: if under the old election system no blacks, or few were ever elected to office, that system will not stand constitutional

muster . The corollary is that if under a proposed election system it is likely that no blacks, or few blacks will be elected to office, the system will not stand constitutional muster.

Beyond that simple rule, a municipality's defensive problems are compounded by the Senate Judiciary Report's list of nine "objective" factors the Courts are to use in analyzing a Section 2 claim

- The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise participate in the democratic process.
- The extent to which voting in the elections of the state or political subdivision is racially polarized.
- The extent to which the state or political subdivision has used unusually large election districts, majority voter requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group.
- If there is a candidate slating process, whether the members of the minority group has been denied access to that process.
- The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.
- Whether political campaigns have been characterized by overt or subtle racial appeals.
- The extent to which members of a minority group have been elected to public office in the jurisdiction.
- Whether there is a significant lack of responsiveness on part of elected officials to the particularized needs of the members of the minority group.
- Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisites to voting. or standard, practice or procedure is tenuous.

But that list of rules is not a comprehensive and exclusive one, and there is no requirement that any particular factors proven, the Senate Judiciary Report continued. In other words, the "totality of circumstances" test permits the plaintiff to use the shotgun approach in his presentation of evidence of discriminatory effect. Any evidence or perceived evidence of discrimination in, as well as by, the city is allowed to be shot forth as evidence of election practices discrimination.

That list of rules has been used in one form or another by the courts in virtually all of the cases challenging at-large systems since Gingles. Many courts have gotten even into white-minority income comparisons as evidence of a lesser ability on the part of the latter to participate in the electoral process!

For an outstanding and devastating example of the Senate Judiciary Committee rules applied in a Tennessee Case, see *Buchanan v. City of Jackson*, 683 F.Supp. 1515 (1988) in which court developed a 170 year of discrimination against blacks in and by the City of Jackson.

What the Gingles three-pronged test and the "factors" that go into an analysis of a Section 2 case mean is that how a case is actually analyzed is "judge's choice." As one prominent writer on the subject pointed out:

Because the nine factors of the Senate Report remain relevant, and because of the presence of constitutional claims, proof in at-large election cases extends backward to formation of a local government in the Nineteenth Century, and extends forward to cover the fairness to minorities of every aspect of current government operations: hiring, housing, urban renewal and relocations, street improvements, school operations and curricula, and the provision of all government services…(emphasis is mine). (Rhyne, William S., Preparing and Trying the At-Large Election Voting Rights Case).

In other words, the at-large system analysis can become an as complicated and comprehensive look into the history of the municipality as the judge wants to make it, and the outcome can be totally unpredictable, depending upon which proof the judge wants to accept or ignore.

Although at-large election systems are not per se unconstitutional or a violation of Section 2, there is a judicial bias against them. While some have been upheld, they have generally received rough treatment in the courts, including in Jackson and Chattanooga.

No matter what good arguments justify at-large systems, where there is a significant minority population in identifiable pockets, they are viewed as an instrument which either dilutes, or have the high potential to dilute, the voting strength of minority groups.

While Section 2 specifically says that “nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population,” arguably, cases brought under that section lead to roughly that result.

The lengths to which the courts have gone to overturn local election practices clearly not designed with discriminatory intent in mind and defensible on common sense grounds is seen in *NAACP v. City of Statesville*, 606 F.Supp. 569 (1985). In that case the parties agreed to a combination district / at large system in which some of the district seats contained a majority black voting age population.

However, the city supported staggered two year terms, the plaintiffs non-staggered four year terms, for the at-large offices. The Court was asked to resolve that difference in a way that would lead to the least diminution of minority voting power. The Court decided that the at-large seats would be filled in non-staggered elections because that method permitted single-shot voting and candidate support trade off agreements between white and black candidates. The terms of office would be for four years because the blacks were less economically able than whites to sustain the cost of more frequent elections.

In theory, a redistricting scheme which incorporates one or two at-large seats would insure the election of members of the minority to office, thereby satisfying Section 2 and Gingles. But a careful reading of Section 2 and the Senate Judiciary Committee Report’s nine rules lead the court’s to ask In theory, a redistricting scheme which incorporates one or two at-large seats would insure the election of members of the minority to office, thereby satisfying Section 2 and Gingles. But a careful reading of Section 2 and the Senate Judiciary Committee Report’s nine rules lead the court’s to ask two questions about minority representation under such a system: (1) Does it permit the minority group to elect minority officeholders? And (2) Does it provide the minority group political power? Minorities may be elected by office in “proper” number in satisfaction of Section 2 and Gingles under a combination district / at-large election system, but conceivably find their political power diluted by the at-large office holders. The court will assure itself that both question are answered in favor of the minority.

Although Section 2 and Gingles may have had in mind voting power as opposed to political power, the latter has become a major component of the “totality of circumstances” test.

In fact, evidence of that can be seen in *Buchanan v. City of Jackson*, 683 F.Supp. 1537 (1988) in which the Court fashioned a remedy to the at-large election system it had found in violation of Section 2 in *Buchanan v. City of Jackson*, 683 F.Supp. 1515 (1988). A proposal by the City of Jackson called for the board of nine commissioners, six district commissioners to be elected from single member districts, and three administrative commissioners to elected at-large.

The three administrative commissioners were to be responsible for the administration of the City of Jackson in virtually the same manner as was the old board of three commissioner struck down by the Court. The Court rejected that plan on the premises that the election of all the administrative commissioners at-large would not remedy effects of past discrimination, which included, among other things, under employment of blacks as City employees, poorly maintained streets in black communities, and the total absence of blacks elected to City administrative ositions or appointed to head any department.

If there has been past discrimination on the part of the city, it is very easy for a court to find that any proposed system in which the majority voters can elect the controlling faction n the governing body perpetuates the effects of past discrimination.

Assume that there are five members of the governing body, two elected from majority districts, two from minority districts, and one elected at-large. If the total number of the majority oting age population in the municipality exceeds the total number of the minority voting age population, the at-large member of the governing body would, given polarized voting, lways be elected by the majority. In addition, he or she would hold the swing vote on the governing body. On the whole, it is not worthwhile to defend an at-large or even a district / at-large election system any place in Tennessee where there are significant identifiable pockets of blacks, unless the city in question has an immaculate history on discrimination. It is essential to remember that the issue here is not whether the municipality intended to discriminate, but whether there was and is discrimination.

Several good Tennessee Attorney General's opinions and publications from various sources have been written on this subject.

Code of Ethics Required

Reference Number: MTAS-505

T.C.A. § 8-17-103 requires municipalities to adopt a code of ethics by ordinance. The ordinance restrictions must apply to boards, commissions, authorities, corporations, and other entities created or appointed by the municipality, except the school board. The school board adopts its own code, and it may use a model provided by the Tennessee School Board Association.

The act charges the UT Municipal Technical Advisory Service (MTAS) with developing model ethical standards for municipalities. **Municipalities are not required to adopt the MTAS model, but if they do not, they must send a copy of the ordinance they adopt to the Tennessee Ethics Commission. Municipalities that adopt the MTAS model must simply notify the commission in writing that the MTAS model was adopted, along with the date of adoption.** (See the proposed MTAS model ordinance provisions [2]).

The act also affects entities created by interlocal agreement under the state's general Interlocal Cooperation Act (T.C.A. §§ 12-9-101 *et seq*,) or otherwise. These entities must adopt an ethics code. Rather than requiring the ethics provisions to be enacted by the governing boards of these entities, however, the act requires the agreement itself to be amended to include the ethics standards. Therefore, municipalities participating in interlocal agreements should take steps to ensure that the agreement is amended to include ethical standards. The accompanying model code of ethics provisions can be used for this purpose.

The act requires local ethics standards to include two restrictions: (1) rules setting limits on and/or providing for reasonable and systematic disclosure of gifts or other things of value received by officials or employees that affect or appear to affect their discretion, and (2) rules requiring reasonable and systematic disclosure by officials and employees of personal interests that affect or appear to affect their discretion. In the MTAS model, we have combined these two restrictions with other ethics provisions that municipalities have commonly adopted. These model provisions are meant to replace the existing provisions in the municipality's code of ordinances or simply to be added as a new chapter if the code has no similar provisions.

In the first footnote in the proposed model, we note several state statutes that establish ethical provisions for municipal officials and employees. We include these references along with the ethical restrictions in the proposed ordinance provisions so that municipal officials and employees can consult one source to determine most of the ethical restrictions that apply to them.

As noted, many municipalities already have ordinances that prohibit the city's officials and employees from accepting any gift or thing of value that could be interpreted as an attempt to influence the officer's or employee's actions with respect to city business. Many have ordinances prohibiting officials and employees from using their positions for personal gain. Many municipalities also have adopted ethics regulations by personnel policy or as part of an employee handbook. Some have ordinances requiring disclosure of personal interests that could affect their decisions.

The ethics act uses the future imperative "shall adopt" in requiring local governments to enact these ethics provisions. It has no provision recognizing that existing ordinances or policies might be adequate. And, as noted above, most existing ordinances do not require disclosure of personal interests in addition to that already required under state law. For these reasons — and possible ouster for failing to do so — most municipalities would be better advised to adopt either the MTAS model or their own ordinance.

Code of Ethics - Explanation of Sections

Reference Number: MTAS-924

SECTION 1. This section provides that the code of ethics adopted by the municipal governing body applies to all full-time and part-time elected and appointed officials, whether compensated or not. It also applies to members and employees of separate boards, authorities, and commissions created by the municipality except the school board, which adopts its own code. This includes planning commissions,

boards of zoning appeals, beer boards, airport authorities and housing authorities, among others. These applications of the code of ethics are mandated by the Ethics Act passed by the General Assembly.

SECTION 2. The Ethics Act passed by the General Assembly requires that “personal interests” that affect or appear to affect the actions of municipal officials and employees must be disclosed, but the state statute does not define “personal interests.” This section defines those interests. This is a broad definition and is much more encompassing than the state’s conflict of interests laws. It includes ANY financial, ownership, or employment interest of an official or employee in a business or entity the municipality does business with, regulates or supervises. It also includes these interests of the listed family members of the official or employee. It includes situations in which the official, employee or family member is negotiating employment with an affected entity. There is some overlap with indirect interests under state law, but most of the situations to which this provision in the code of ethics applies will not be covered by the conflicts of interests laws. An example would be a family member of a member of the governing body who is an employee of a business seeking to do business with the municipality. This would not be a direct or indirect conflict of interests under the state law, but it would be a personal interest that would have to be disclosed under this definition. This section provides that when there is an overlap with the conflicts of interests laws, those laws take precedence.

SECTION 3. This section requires an official with the responsibility to vote to disclose any of his or her personal interests that might affect his or her discretion before the vote so that they appear in the minutes. The state statute does not require an official with a personal interest to recuse himself from voting. The implication of the statute is to the contrary and that after disclosure the official may vote. Nevertheless, this section allows, but does not require, the official to recuse himself.

SECTION 4. This section applies to employees and officials who must exercise discretion in matters that do not require a vote. The official or employee should, when possible, disclose the personal interest before the exercise of the discretion. Again, recusal is not required, but this section allows it when it is permitted by law, charter, ordinance or policy of the municipality.

SECTION 5. This section prohibits an official or employee from taking any money, gift, favor, or other gratuity from anyone other than the municipality for the performance of the official’s or employee’s regular duties or that gives the appearance of attempting to influence the discretion of the official or employee in carrying out municipal business. This is a somewhat modified version of a provision that most municipalities already have on the books. An alternative to this gift prohibition that is allowed by the state ethics statute would be to allow gifts and gratuities up to a certain amount but to require reporting of those items. MTAS decided on prohibition because it is simpler to implement and because most cities already have similar provisions.

SECTION 6. This section prohibits officials and employees from disclosing confidential information and from disclosing any other information with the intent to result in financial gain. Again, these are common provisions in ethics ordinances that some cities have already adopted.

SECTION 7. This section prohibits officials and employees from using or authorizing the use of municipal time and facilities for their own financial gain. It also prohibits this for other entities or individuals unless it is authorized by contract or lease determined by the governing body to be in the best interests of the municipality. This is a provision similar to ones that have been adopted by many municipalities.

SECTION 8. This section prohibits officials and employees from using their position to make private purchases in the name of the municipality and from using their position to gain privileges or exemptions that are not authorized by charter, general law, ordinance, or policy. These provisions are similar to provisions adopted by many municipalities.

SECTION 9. This section prohibits outside employment by officials or employees if the outside work interferes with municipal duties or is in conflict with any provision of the charter, any ordinance, or any policy of the municipality. Many municipalities have adopted similar provisions.

SECTION 10. This section provides methods for bringing and investigating complaints of violations of the code of ethics. The city attorney is designated as the ethics officer and may issue written opinions when requested on whether certain conduct would comply with the code of ethics and other applicable law. The city attorney is designated to receive and investigate complaints about officials and employees who are not members of the governing body. The attorney may request that the governing body designate another person or entity to act as ethics officer when he or she has a conflict of interests. The governing body must determine the merit of complaints against its members. If the governing body determines that a complaint warrants further investigation, it must authorize the investigation by the city

attorney or another person or entity chosen by the governing body. An alternative to appointing the city attorney as ethics officer would be to appoint another individual, such as another attorney or a retired judge. If a municipality chooses to do this, it probably would want to provide for the appointment of the ethics officer after each municipal election. The position could be compensated or uncompensated, although it is unlikely many individuals would be willing to serve if the position is not compensated. Another acceptable alternative would be to establish a board of ethics to perform these functions. For municipalities that choose this alternative, MTAS suggests a three-member board to be appointed by the governing body. Terms probably should be three years. Because many municipalities already have personnel policies that deal with some of the same behaviors regulated by the code of ethics, this section provides that when a violation of the code of ethics also constitutes a violation of a personnel or civil service policy, rule, or regulation, the violation would be handled as a violation of the personnel provisions rather than as a violation of the code of ethics. This section also provides for a "reasonable person" interpretation and enforcement of the code of ethics. MTAS chose the above provisions for designating the ethics officer and for handling ethics complaints for the model code of ethics because they seemed simpler, less costly, and most appropriate for most Tennessee municipalities.

SECTION 11. This section provides for punishment for violations. Elected officials and appointed members of boards and commissions are punishable as already provided by law and, in addition, are subject to censure by the governing body. Appointed officials and employees are subject to disciplinary action. Municipalities that adopt the MTAS Model Code of Ethics must send a notice that it has been adopted, including the date of adoption, to the Tennessee Ethics Commission. Municipalities that do not adopt the MTAS model must send a copy of the ordinance they do adopt to the Ethics Commission. Send the notice to:

Tennessee Ethics Commission

404 James Robertson Parkway

Suite 104

Nashville, TN 37243

ethics.counsel@tn.gov [3]

MTAS Model Code of Ethics

Reference Number: MTAS-513

Code of Ethics [1]

SECTION 1. Applicability. This chapter is the code of ethics for personnel of the municipality. It applies to all full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board (except school board), commission, committee, authority, corporation, or other instrumentality appointed or created by the municipality. The words "municipal" and "municipality" include these separate entities.

SECTION 2. Definition of "personal interest."
(1) For purposes of Sections 3 and 4, "personal interest" means:
(a) Any financial, ownership, or employment interest in the particular entity or person that is the subject of a vote by a municipal board not otherwise regulated by state statutes on conflicts of interests; or
(b) Any financial, ownership, or employment interest in the entity or person to be regulated or supervised; or
(c) Any such financial, ownership, or employment interest of the official's or employee's spouse, parent(s), stepparent(s), grandparent(s), sibling(s), child(ren), or stepchild(ren).

(2) The words "employment interest" include a situation in which an official, an employee or a designated family member is negotiating possible employment with a person or entity that is the subject of the vote or that is to be regulated or supervised.

(3) In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter.

SECTION 3. Disclosure of personal interest by official with vote. An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to

infer that it affects the official's vote on the measure. In addition, the official may recuse himself from voting on the measure.

SECTION 4. Disclosure of personal interest in nonvoting matters. An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the particular person or entity being regulated or supervised that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose the interest on a form provided by and filed with the recorder before the exercise of the discretion when possible. In addition, the official or employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself from the exercise of discretion in the matter.

SECTION 5. Acceptance of gratuities, etc. An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the municipality:
(1) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or
(2) That might reasonably be interpreted as an attempt to influence his discretion, or reward him for past exercise of discretion, in executing municipal business.

SECTION 6. Use of information.
(1) An official or employee may not disclose any information obtained in his official capacity or position of employment that is made confidential under state or federal law except as authorized by law.
(2) An official or employee may not use or disclose information obtained in his official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity.

SECTION 7. Use of municipal time, facilities, etc.
(1) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself.
(2) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.

SECTION 8. Use of position or authority.
(1) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.
(2) An official or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

SECTION 9. Outside employment. An official or employee may not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy.

SECTION 10. Ethics complaints.
(1) The city attorney is designated as the ethics officer of the municipality. Upon the written request of an official or employee potentially affected by a provision of this chapter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.
(2) (a) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on his own initiative when he acquires information indicating a possible violation and make recommendations for action to end or seek retribution for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.
(b) The city attorney may request that the governing body hire another attorney, individual, or entity to act as ethics officer when he has or will have a conflict of interests in a particular matter.
(c) When a complaint of a violation of any provision of this chapter is lodged against a member of the municipality's governing body, the governing body shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If the governing body determines that a complaint warrants further investigation, it shall authorize an investigation by the city attorney or another individual or entity chosen by the governing body.
(3) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.
(4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or

regulation or a civil service policy, rule, or regulation, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this code of ethics.

SECTION 11. Violations. An elected official or appointed member of a separate municipal board, commission, committee, authority, corporation, or other instrumentality who violates any provision of this chapter is subject to punishment as provided by the municipality's charter or other applicable law and, in addition, is subject to censure by the governing body. An appointed official or an employee who violates any provision of this chapter is subject to disciplinary action.

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[1] State statutes dictate many of the ethics provisions that apply to municipal officials and employees. For provisions relative to the following, see the *Tennessee Code Annotated* sections indicated:
Campaign finance — T.C.A. Title 2, Chapter 10.
Conflict of interests — T.C.A. §§ 6-54-107, 108; 12-4-101, 102.
Conflict of interests disclosure statements — T.C.A. §§ 8-50-501 *et seq.*
Consulting fee prohibition for elected municipal officials — T.C.A. §§ 2-10-122, 124.
Crimes involving public officials (bribery, soliciting unlawful compensation, buying and selling in regard to office) — T.C.A. § 39-16-101 *et seq.*
Crimes of official misconduct, official oppression, misuse of official information — T.C.A. §§39-16-401 et seq. Ouster law — T.C.A. §§ 8-47-101 *et seq.*

Legislative Process

Reference Number: MTAS-989

In the earliest and coldest months of each year, the Tennessee General Assembly begins meeting to consider legislation for the state. Each General Assembly lasts two years and has two sessions — the first session in odd-numbered years and the second session in even-numbered years. Each session will usually run from January until mid-May.

The organizational session of each General Assembly must be held on the second Tuesday in January, after members of the House of Representatives have been elected. General Assembly officers, such as speakers of the two houses, are chosen during this phase. The organizational session may last no longer than 15 consecutive calendar days, and no legislation may be passed on third reading during this period. The General Assembly must meet on the first Tuesday after the organizational session, unless it sets an earlier date by joint resolution.

The second session (or second year) of each General Assembly usually begins in January, also. During each session, the General Assembly will consider approximately 2,800 bills (1,400 in each House) and will adopt around 500 new public acts. Of these new public act, about 200 will affect municipalities and municipal officials to some degree.

Although the General Assembly meets only during the first few months of each year, preparations for the next session frequently begin during the current session and continue throughout the year. Legislation often spawns more legislation, or it may be necessitated by actions of other bodies and officers. The courts or the attorney general, for example, may render decisions or opinions that are adverse to municipal interests and demand legislative correction.

Legislative bills often turn out to be complex, with many people and many groups involved in their development and preparation. Legislation dealing with municipal purchasing, for example, might mean several weeks of meetings and informal discussions among city officials, Tennessee Municipal League (TML) staff, Municipal Technical Advisory Service (MTAS) consultants, private company representatives, and the comptroller's office staff. Legislation might go through many revisions before agreement is reached on the final version of the proposed bill. Legislative work is not as seasonal as one might first expect.

The purpose of this report is to inform city officials about the legislative process and how public acts are passed. Public acts that affect cities will influence all, almost all, or a whole group of cities (such as all cities incorporated under the Uniform City Manager-Commission Charter). Private acts, which are legislative enactments generally affecting only one city or county and requiring local approval, are not considered here.

Drafting Legislation

Reference Number: MTAS-991

Legislation should be drafted as far in advance of the legislative session as possible. This should be done not only to easily meet deadlines, but to make sure the legislation is correct and acceptable to other groups. Support, or even lack of opposition, from such groups can be crucial to legislation passage. One way to gain support or reduce opposition is to let interested groups or organizations review the proposed legislation beforehand and suggest any needed changes. These reviews can take much time.

The larger cities in the state have their own staff attorneys who draft legislation for them. The league or MTAS often drafts bills for smaller cities and public acts affecting all cities. Also, city attorneys may draft legislation for smaller cities. No matter who does the work, inform TML.

Telling the league of your city's need for a public act might relieve you of everything but asking your legislators to vote for the bill. The league can have the bill drafted and introduced, and will even shepherd it through the legislature. The league might tell you that no legislation is needed, or that a private act, as opposed to a public act, is required.

Introduction of the Bill

Reference Number: MTAS-992

Once the bill is drafted, it usually will be submitted to the General Assembly's Office of Legal Services. This department often changes a bill's wording, so carefully check the language coming out of this office to make sure the bill's meaning has not been altered. The Office of Legal Services enters the bill in the legislature's computer system, which keeps track of bills and amendments. This department will also place the bill in Senate and House color-coded folders (jackets) and make it ready for introduction.

After a bill has been jacketed, it is ready to be given to a sponsor — a member of the Senate or House who agrees to help pass the bill. The sponsor must explain the bill in committee hearings and on the floors of the respective houses. Choosing a sponsor can be very important to a bill's passage.

Different legislators have different interests. Some legislators know a great deal about fiscal and tax matters and therefore like, or at least are willing to sponsor, bills dealing with those subjects. Others are interested in agriculture, conservation, and a whole range of other subjects. There are some legislators who are particularly concerned with and act favorably toward cities. Knowing which legislators are interested in what is one of the keys to finding good sponsors.

A sponsor must be obtained for each bill in each House. Securing a sponsor means going to the selected legislator, explaining the bill, and asking him or her to sponsor it. Often sponsors agree; sometimes they don't. Sometimes they agree to sponsor if certain changes are made. When they don't agree to sponsor the bill for some reason, or if they ask for too many changes, other sponsors must be found. Once you've gained a willing sponsor, he or she must file the bill with the clerk of the sponsor's House, who assigns the bill a number. In the Senate, the number of the first bill introduced will be SB 1 (short for Senate Bill Number 1). In the House, the first bill will be HB 1 (short for House Bill Number 1), and so on. Each bill in one House should have an identical, or companion, bill in the other House. The companion bills, although identical, will not usually have the same bill numbers. It should be pointed out here that each House has rules setting deadlines, or bill cutoff dates, for introducing general bills. These deadlines make it imperative to draft all bills by the beginning of each legislative session.

Bills may be pre-filed before the beginning of each session, however, in accordance with T.C.A. 3-2-108 and 109 (see Provisions from Tennessee Code Annotated [4]). Pre-filing a bill simply means dropping it in the legislative hopper before the session starts. Bills must be passed on three different days to become law. The first two considerations are usually routine, and bills are passed en masse. The third consideration is when the bill, if it makes it that far, will get individual scrutiny. Before getting to the floor for the third consideration, however, the bill must be considered by at least one Standing Committee and scheduled for floor action by the Calendar Committees of each House. The Calendar Committee in the Senate merely schedules bills for floor action if they have been approved by the proper Standing Committee. In the House, the Calendar and Rules Committee exercises greater authority and may schedule the bill, defeat the bill, or send it back to the committee from which it came.

Legislative Committees

Reference Number: MTAS-993

Once a bill has been passed routinely on first and second consideration, the speaker will assign the bill to a committee based on its subject matter. Bills affecting cities often go to the State and Local Government Committees of the two houses. Bills dealing with local taxes and others concerned only with finances generally go directly to the Finance, Ways and Means Committees of each House. Any bill having a large fiscal impact (the exact dollar figure is set in the rules of each House for each session), no matter what its subject, must go to the Finance, Ways and Means Committees after it has received approval by the Standing Committee that deals with the subject matter. Thus, bills with a large fiscal impact often must be approved by two Standing Committees — the committee concerned with the subject matter and the committee dealing with finances.

In addition to the committee system, the House of Representatives uses subcommittees as well. Thus, a bill assigned to a particular committee will then be assigned to a subcommittee based on its subject matter. Subcommittees function like small committees and create one additional hurdle for bills in the House.

Bills in committee are set for a hearing by the chair, in consultation with the vice chair and secretary. Bills generally are placed automatically on calendars in the Senate committees. But, the committee chair and those he or she consults with must consider both the legislation's necessity and importance to determine how early or late to place bills on the calendar. In House committees, when sponsors ask the bills be put on the calendar, they are generally place on the calendar first.

The calendar, or the list of bills that a committee will consider, is published before each committee meeting. The calendar for the meetings of each committee must be reviewed by local government lobbyists and others to determine which bills in what committees affect cities. All committees must be monitored. The interests of municipalities are so wide-ranging that legislation in any committee in either House can affect them.

Once it has been determined that a bill affects municipalities, it must be decided whether the impact is good, bad, or neutral. This task is not always easy. However, a decision has to be made, often in a short amount of time. If a bill is bad, local government lobbyists will lobby against the bill. If a bill is good, local government lobbyists will not lobby against it and might lobby for it. The calculations that determine legislative action can be very complex. Let's say a bill is moderately positive for cities, but one of the committee members is strongly opposed to it. If this member is a friend of cities and can help municipalities later, it might be determined not to lobby for the bill at the risk of upsetting a friend.

(Lobbying, by the way, means trying to persuade legislators to vote the way you want them to vote or to do what you want them to do. Local governments lobbyists do this by marshaling facts and figures to support their positions and by using logic, reason, and appeals to fairness, common sense, and friendship. To help make lobbying decisions and assignments and to coordinate their efforts, local government lobbyists have formed a lobbying group, made up of lobbyists from TML, the Tennessee County Services Association, the Tennessee County Executives Association, the Tennessee County Commissioners Association, the Tennessee County Highway Officials Association, and the larger cities in Tennessee. Occasionally other lobbyists, such as those for the County Officials Association of Tennessee, also join the group. It meets each day when the legislature is in session to go over the next day's calendars and plan legislative strategy.)

When a bill is considered in committee, the sponsor must come before the group to explain it and answer questions. For the sponsor to do this, the group or organization that initiated the bill will have to provide him or her with information about the bill and its impact. To prepare for committee hearings, sometimes sponsoring legislators will ask for specific details about the bill's necessity or effects.If no group has lobbied against a bill and the sponsor does a good job of explaining it, the committee hearing generally will go smoothly.

The committee hearings are usually where opposition surfaces, if it hasn't already. Several legislators might oppose the bill, ask difficult questions, or indicate the need to change the bill before they can vote for it. Legislators might propose specific amendments to the bill and otherwise prod the sponsor to alter it. If it becomes clear that there are not enough votes to pass the bill out of committee without major modifications, the sponsoring legislator often will ask to put off the bill for future consideration so the conflicting sides can reach a compromise. Opposition, questions, and proposed changes to the bill more often than not are the result of lobbying by a group or groups opposed to the measure. This lobbying often will result in either killing the bill altogether or producing a bill both sides find acceptable.

Sometimes the difficult questions that legislators ask in committee hearings are not the result of lobbying, but of the legislators' own concerns. Legislators are not shy about questioning a bill if they find it objectionable or if they don't understand it. It's impossible to anticipate every question people might ask about a bill or every argument they might use against it. Therefore, when TML or other city bills are before a committee, there is always someone from the TML staff or another local government lobbyist present who can help the sponsor. Also, if committee members propose amendments, the staff person can tell the sponsor and committee if the amendments are acceptable or if the sponsor should ask to delay the bill so the amendments can be reviewed and options explored.

When opposition amendments have been proposed, options include accepting the amendments, making counterproposals relative to amendments, making some other trade-off connected to the bill, withdrawing the bill, or attempting to pass the bill without amendments. Decisions on these options depend on the bill's importance, the strength of support for and opposition to the bill, and the effect this legislation would have on other TML bills and TML's relationships with different legislators. Again, the complexity of the legislative process manifests itself.

Once a bill has been passed by the committee, it must go to the Calendar Committee (Senate) or Calendar and Rules Committee (House) for scheduling for the floor action, unless the bill has a large fiscal impact. Then it must go the Finance, Ways and Means Committee first for approval. As noted earlier, the Calendar Committee in the Senate merely schedules bills for floor action. The Calendar and Rules Committee in the House may delay or kill a bill or schedule it for floor action.

Governor's Action

Reference Number: MTAS-995

If the governor signs the bill when it is presented, it becomes law as provided for in the bill. If he or she vetoes the bill, the governor must return it, with written objections, to the House in which it originated. For the vetoed bill to become a law, the veto must be overridden in both houses by a majority of the elected members. If the governor fails to take any action on a bill within 10 calendar days (Sundays excepted) after it has been presented, it becomes law without his or her signature.

Provisions from the Tennessee Constitution

Reference Number: MTAS-996

From Article 2

Sec. 8. Legislative sessions — governor's inauguration. The General Assembly shall meet in organizational session on the second Tuesday in January next succeeding the election of the members of the House of Representatives, at which session, if in order, the governor shall be inaugurated. The General Assembly shall remain in session for organizational purposes not longer than 15 consecutive calendar days, during which session no legislation shall be passed on third and final consideration. Thereafter, the General Assembly shall meet on the first Tuesday next following the conclusion of the organizational session unless the General Assembly by joint resolution of both houses sets an earlier date.

The General Assembly may by joint resolution recess or adjourn until such time or times as it shall determine. It shall be convened at other times by the governor as provided in Article III, Section 9, or by the presiding officers of both houses at the written request of two-thirds of the members of each House.

Sec. 17. Origin and frame of bills. Bills may originate in either House; but may be amended, altered or rejected by the other. No bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended.

Sec. 18. Passage of bills. A bill shall become law when it has been considered and passed on three different days in each House and on third and final consideration has received the assent of a majority of all the members to which each House is entitled under this constitution, when the respective speakers have signed the bill with the date of such signing appearing in the journal, and when the bill has been approved by the governor or otherwise passed under the provisions of the constitution.

Sec. 19. Rejection of bill. After a bill has been rejected, no bill containing the same substance shall be passed into a law during the same session.

Sec. 20. Style of laws — effective date. The style of the laws of this state shall be, "Be it enacted by the General Assembly of the State of Tennessee." No law of a general nature shall take effect until 40 days after its passage unless the same or the caption thereof shall state that the public welfare requires that it should take effect sooner.

From Article 3

Sec. 18. Bills to be approved by the governor — governor's veto — bills passed over governor's veto. Every bill which may pass both houses of the General Assembly shall, before it becomes a law, be presented to the governor for his signature. If he approves, he shall sign it, and the same shall become a law; but it he refuses to sign it, he shall return it with his objections thereto, in writing, to the House in which it originated; and said House shall cause said objections to be entered at large upon its journal and proceed to reconsider the bill. If after such reconsideration, a majority of all members elected to that House shall agree to pass the bill, notwithstanding the objections of the executive, it shall be sent, with

said objections, to the other House, by which it shall be likewise reconsidered. If approved by a majority of the whole number elected to that House, it shall become a law. The votes of both houses shall be determined by yeas and nays, and the names of all members voting for or against the bill shall be entered upon the journals of their respective houses.

If the governor shall fail to return any bill with his objections in writing within 10 calendar days (Sundays excepted) after it shall have been presented to him, the same shall become a law without his signature. If the General Assembly by its adjournment prevents the return of any bill within said 10-day period, the bill shall become a law, unless disapproved by the governor and filed by him with his objections in writing in the office of the secretary of state within said 10-day period.

Every joint resolution or order (except on question of adjournment and proposals of specific amendments to the constitution) shall likewise be presented to the governor for his signature, and on being disapproved by him shall in like manner, be returned with his objections; and the same before it shall take effect shall be repassed by a majority of all the members elected to both houses in the manner and according to the rules prescribed in case of a bill.

The governor may reduce or disapprove the sum of money appropriated by any one or more parts of items in any bill appropriating money, while approving other portions of the bill. The portions so approved shall become law, and the items or parts of items disapproved or reduced shall be void to the extent that they have been disapproved or reduced unless repassed as hereinafter provided. The governor, within 10 calendar days (Sundays excepted) after the bill shall have been presented to him, shall report the items or parts of items disapproved or reduced with his objections in writing to the House in which the bill originated, or if the General Assembly shall have adjourned, to the office of the secretary of state. Any such items or parts of items so disapproved or reduced shall be restored to the bill in original amount and become law if repassed by the General Assembly according to the rules and limitations prescribed for the passage of other bills over the executive veto.

Bill Provisions from T.C.A.

Reference Number: MTAS-997

§ 3-2-102. Presentation to governor. Every bill, joint resolution, or order, except on questions of adjournment and proposals of specific amendments to the constitution, shall, after the same has been passed, enrolled, and signed by the speakers of both houses of the General Assembly, be presented by the Committee on Enrolled Bills of that House wherein such bill, joint resolution, or order originated, to the governor for his signature; and said committee shall report that they have presented the bill, joint resolution, or order to the governor for his signature, and the date of such presentation, which report shall be entered on the journal of that House to which such committee belongs; provided, that no bill, joint resolution, or order shall be presented to the governor until the time for moving a reconsideration shall have expired, unless expressly ordered by that House wherein such bill, joint resolution, or order originated; and provided further, that the speaker of the Senate shall first sign all bills and joint resolutions originating in the Senate, and the speaker of the House of Representatives shall first sign all bills and joint resolutions originating in the House of Representatives.

§ 3-2-103. Approval of governor. If the governor approves the bill, joint resolution, or order, he shall write upon the same, to the left of and below the signatures of the speakers of the two houses, the fact and date of his approval, as follows: " Approved _____, 20_____," and shall sign the same as follows: "_____, governor."

§ 3-2-104. Failure of government to return. If, while the General Assembly remains in session, the governor shall fail to return any bill, joint resolution, or order, with his objections, within 10 days (Sundays excepted) after it shall have been presented to him, it shall be the duty of the Committee on Enrolled Bills of that House wherein such bill, joint resolution, or order originated to cause said bill, joint resolution, or order forthwith to be re-enrolled; and the same shall thereupon be signed by the respective speaker of each House, who shall annex and sign the following certificate:

"This bill (joint resolution or order) having been presented to the governor for his signature on the _____ day of _____, and the governor having failed to return it within the time prescribed by law, the same is hereby declared to have become a law (or, in case of a joint resolution or order, the same is hereby declared to have taken effect).

This _____day of _____, 20___.

_____, speaker of the House of Representatives

_____, speaker of the Senate."

§ 3-105. Filing with secretary of state. When any bill, joint resolution, or order shall have been returned duly signed by the governor, or shall have been passed over his veto, or shall otherwise become a law, the Committee on Enrolled Bills of that House wherein such bill, joint resolution or order originated, shall forthwith file the same in the office of the secretary of state, and shall report the fact and date of such filing, which report shall be entered upon the journal.

§ 3-2-106. Preservation of original acts. The original acts and resolutions passed by the General Assembly, and enrolled and filed in the office of the secretary of state, shall be bound together and preserved in that form in said office, and the secretary of state shall cause the same to be done.

§ 3-2-107. Fiscal notes for revenue bills — cumulative fiscal notes while legislature in session — preparation and content. (a) Fiscal notes shall be provided for all general bills or resolutions increasing or decreasing existing appropriations or the fiscal liability of the state or of local governments of the state. Not more than seven days following the introduction of any such bill or resolution, the Fiscal Review Committee shall furnish to the chief clerk of the House or houses of introduction a statement of analysis of the fiscal effect of such bill or resolution and shall prepare and distribute copies of the statement to members of the General Assembly. Within seven days following receipt of a request from a member of the General Assembly for a fiscal note on any proposed bill or resolution requiring a fiscal note, the Fiscal Review Committee shall prepare a fiscal note statement to accompany such proposal at the time of introduction. Within 24 hours following a request by the sponsor of an amendment to any pending measure on which a fiscal note is required by this section, the Fiscal Review Committee shall prepare for the sponsor a fiscal note showing what effect the amendment would have on the estimates made in the fiscal note which applies to the bill or resolution. In regard to any bill or resolution affecting local government, the director of the Division of Local Finance in the office of the comptroller is directed to provide to the Fiscal Review Committee, upon request, the information necessary to determine the fiscal effect of such bill or resolution.

The fiscal note shall, if possible, include an estimate in dollars of the anticipated change in revenue, expenditures, or fiscal liability under the provisions of the bill or resolution. It shall also include a statement as to the immediate effect and, if determinable or reasonably foreseeable, the long-range effect of the measure. If, after careful investigation, it is determined that no dollar estimate is possible, the note shall contain a statement to the effect setting forth the reasons why no dollar estimate can be given. The fiscal note statement shall include an explanation of the basis or reasoning on which the estimate is founded, including any assumptions involved.

No comment or opinion shall be included in the fiscal note regarding the merits of the measure for which the note is prepared; however, technical or mechanical defects may be noted.

(b) A cumulative fiscal note shall be prepared weekly by the Fiscal Review Committee and a copy shall be distributed to each member of the General Assembly each week while the General Assembly is in session. The cumulative fiscal note shall show the cumulative increase or decrease of revenue or expenditures as caused by legislation enacted from the beginning of the session then convened.

§ 3-2-108. Prefiling bills or resolutions — time — manner. (a) At the time specified in this session and § 3-2-109, members of the legislature are hereby authorized to prefile legislative bills and resolutions for introduction in the next succeeding regular legislative session.

(b) Bills and resolutions may be prefiled at the following times:

1. In the case of both senators and representatives, from the time that a member-elect has received his certification of election until next succeeding regular legislative session.

2. In the case of both senators and representatives, from the adjournment of the regular legislative session in odd-numbered years until the convening of the regular legislative session in even-numbered years.

3. In the case of senators, from the date of each general election of representatives at which senators area not regularly elected until the next succeeding regular legislative session.

(c) Bills and resolutions which are prefiled under the provisions of this section and § 3-2-109 shall be in such final and correct form for introduction in the legislature as is required by the constitution, laws, and rules of the respective houses of the legislature.

(d) The original copy of every bill and resolution prefiled shall be inspected by an attorney for the legislative drafting service.

(e) Any bill or resolution prefiled under this section and § 3-2-109 shall be mailed to the chief clerk of either House by registered or certified mail, return receipt requested, or by personal delivery by a member of the legislature who is one of the authors of the bill or resolution, and in the case of personal delivery the office of chief clerk of either House shall deliver a signed receipt therefor to such author.

(f) Any Standing Committee may prefile any bill or resolution at any time when a senator or representative is authorized to prefile bills and resolutions under this section. Bills or resolutions filed under authority of this subsection (f) shall be filed by the chairman or vice chairman of the Standing Committee in the same manner as such chairman or vice chairman would prefile a bill of which he was the author, or in the event neither the chairman nor vice chairman desires to sign said bill any member of the committee voting with the majority of the committee may introduce same. Before prefiling any bill or resolution under authority of this subsection, the chairman or vice chairman shall be authorized to make such prefiling by a majority vote of the members of his committee.

(g) The chief clerk of either the Senate or the House of Representatives shall number the bill or resolution and note thereon the date of the prefiling and the date of the first day of the next session of the General Assembly on which it will be first considered and passed. The procedures for printing and distribution shall be the same for prefiled bills and resolutions as if the General Assembly were in regular session.

§ 3-2-109. Placing prefiled bill or resolution on calendar — failure to comply procedurally. Immediately upon the convening of the next succeeding regular session of the legislature all bills and resolutions prefiled in accordance with § 3-2-108 and this section shall be deemed properly introduced and shall be placed upon the calendar on the first legislative day for the first consideration and passage in the same manner as bills and resolutions introduced after the convening of the legislature.

When any prefiled bill or resolution is placed on the calendar for first consideration and the same is passed, any prior failure to comply with any of the procedural requirements of § 3-2-108 and this section shall have no effect on the validity of such bill or resolution.

Citizen Advisory Committees

Reference Number: MTAS-1111

Using Short-term Advisory Committees to Help Resolve Local Problems

City councils often are confronted with problems or projects where it is worthwhile to seek advice from local citizens having special knowledge and expertise. Issues involving new technology immediately come to mind — a council might seek advice from people in the community known to have experience in the operation of computers, software or other technical gadgetry.

But a city council also may seek citizen assistance for a wide variety of routine problems as well.

- A city council may want input from concerned citizens on how best to clean up areas of town where weeds, trash and other litter exist.
- A city may want advice from senior citizens to help guide city policy on providing services to the elderly.
- A city may want citizen input on hiring a new city manager, a group that can help the council focus on the skills and abilities needed in the new manager.
- The park board may want advice from park patrons on developing walking trails and exercise stations in a city park.

In every community there are residents who have credentials qualifying them to advise their elected and appointed officials on these sorts of questions. It sometimes is wise to ask these people for help when formulating city policies, especially when the governing board and the staff may lack the expertise needed to make informed decisions.

We are not talking about the various standing committees that may exist in the city government -- the park board, the planning commission, etc. Instead, we are considering citizen panels that are appointed to investigate or review a single issue and that are disbanded once recommendations on that issue have been delivered to the governing body.

Value of Citizen Advisory Committees

Reference Number: MTAS-1112

Properly appointed, a citizens advisory committee can provide two valuable services to city government:

- First, the committee can offer specialized, practical expertise that may not be available from the city council or city staff. Such citizens often can help guide city leaders on important issues, usually at little or no cost to the city.
- Second, the committee can lend legitimacy and credibility to the ultimate decision made by city government. Properly advised by the committee, the city council's decisions are more likely to be seen as fair and considerate of all people having a stake in the outcome. Ideally, the committee can even help "sell" the council's decision to the public.

Before Creating an Advisory Committee

Reference Number: MTAS-1113

It has been said that "advice is what we ask for when we already know the answer but wish we didn't." Before creating an advisory committee and obligating local citizens to a significant commitment of their time, city officials should consider these questions:

- Is the issue already decided? Is the committee being created simply to validate a decision that has already been made? It is unethical to use citizens in this manner.

- Is the city governing board or staff uncomfortable with the issue at hand? Is the decision likely to be controversial? Is the committee being created simply to diffuse the anticipated public criticism? Never appoint a citizen committee to avoid responsibility for a difficult decision. The committee members will feel used and manipulated and are likely to say as much to the general public in the ensuing controversy.
- Does the city have all the information it needs to make a decision on the issue it is confronting? If not, would creating a citizen panel serve to better inform the city's decision?
- Do city staff have the background and expertise necessary to process the available information? Would a citizen panel be useful to the city in digesting the available information?
- How much time will advisory committee members need to devote to the project? Is it reasonable to expect the members to dedicate this much time?
- Are there people in the community having knowledge of the issues involved? Or, is the issue so specialized or complex that it will be difficult finding a sufficient number of committee members to advise the city?
- Is the governing board or staff prepared to accept advice that may conflict with their long-held, established viewpoints? A Chinese proverb has it that "honest advice is unpleasant to the ears." Before asking for citizens' advice, the governing board must realize the truth inherent in this proverb. Cities should not ask for advice they have no intention of heeding.

Finding the Right People

Reference Number: MTAS-1114

Once the decision to appoint an advisory committee is made, qualified residents must be identified and recruited to serve. This sounds much easier than it usually is. Many qualified people will decline involvement due to their lack of time to commit to the project. Others will decline service if the project is seen as controversial.

Cities are urged to avoid the "want ads" approach to finding people to serve on committees. Advertisements in the media may attract a large number of volunteers, but most will not have the expertise you are looking for. Some may have issues with the city and are looking for a platform to air these issues. Remember that you are seeking advice from known experts in your town to help resolve difficult problems. Every person on the street will have an opinion about what direction the city should take, but expertise is not evenly distributed throughout the community.

Instead, the governing board and staff should draw up lists of people recognized as having the necessary qualifications and who also are seen as community leaders. A proactive approach to recruiting these individuals should be undertaken. Professional groups, civic organizations, educators, clergy and neighborhood associations may be helpful in identifying those who possess the knowledge for the task.

In making appointments to citizen panels, you generally should avoid the following types of people:

- People known to have conflicts of interest in the issue and those who want to sell the city a specific product or service and who have a stake in the final decision.
- Relatives of board members or staff.
- Obstructionists. An effective citizen panel will consist of citizens having wide and diverse backgrounds. Each member should be able to speak freely and be critical of the status quo. You should look for problem solvers and avoid those who cannot suggest reasonable solutions to the objections they may raise.
- People with political ambitions. One of the purposes of seeking citizen advice is to receive input that is not colored by politics and that provides an objective analysis of facts. Appointing politicians (or wannabes) to advisory committees defeats this purpose.

Focusing the Committee

Reference Number:

MTAS-1115

It generally is best for the committee to be appointed by the governing board. It lends legitimacy to the committee and underscores the importance of the project.

Prior to appointment, the city must provide a charge for the committee, a clearly written mission statement and set of objectives. The objectives should be provided in writing and clearly delineate the sort of recommendations being sought. Ideally, the charge to the committee would be put in the form of a question, for example, “What training, skills and experience should the city council seek in a new city manager?”

The focus of the committee will be improved if the city provides written instructions on the following:

- The authority of the committee to expend money, hire consultants, etc. Generally, it is a good idea to require that all committee expenditures be approved in advance by the appropriate city official or the governing board. Be very clear about this point. Do not let the panel spend money for which it is not legally accountable.
- Likewise, the authority to solicit donations on the city’s behalf should be clearly understood by all parties. If the committee is given such authority, it is wise to have a written policy in place on the methods and conditions of such solicitations.
- The need for the committee to comply strictly with the Tennessee Open Meetings Law and the Open Records Law. There can be no secret meetings, and all documents must be turned over to the city recorder for safekeeping.
- Some basic operating rules: where meetings are to be held, appointing a chairperson, etc.
- The authority, if any, to direct the work of city staff.
- The names of staff members and consultants available to assist the committee and how such individuals are to be contacted.
- The deadline for submitting a recommendation.

Most importantly, before beginning its work the advisory committee members must clearly understand and accept that the governing board will make the final decision on any recommendations it receives and that the final decision may be at variance with the committee’s advice.

Without such explicit instructions, a citizen committee may find itself exploring issues that were never intended when they were appointed. This can result in embarrassment to the governing board and threaten the committee’s success.

Staff's Role

Reference Number: MTAS-1116

A citizen committee will benefit from having access to the city’s professional staff who can help arrange and coordinate committee meetings, perform research and provide reports for the committee’s study, and handle media inquiries.

Often, it is helpful to appoint a staff member (city manager, city recorder, city attorney, department head, etc.) to serve as an official advisor to the committee.

Although it is important to make staff available to assist the committee, it also is important that staff members do not dominate the committee’s work. A staff member’s knowledge and expertise may be used to help inform the committee, but the purpose of a citizen committee is, after all, to provide a perspective that might not otherwise be available within the usual machinery of government. Staff should assist the committee but not run it.

Making Recommendations to Board

Reference Number: MTAS-1117

In most instances, it will be best that the committee submit written recommendations to the governing board. Oral reports may suffice for minor issues, but misunderstandings can be avoided if the committee issues a written final report to the board.

It is important that each recommendation included in the report be voted upon by the committee members and that the report reflect the outcome of such voting. Reporting the outcome of these votes will enable the governing board to better evaluate the committee's recommendations. A 4 to 3 vote in favor of a recommendation may not be as impressive as one recorded as 7 to 0.

When the advisory committee is sharply divided on any recommendation, it may be advisable to allow a minority report to be submitted. This is a written statement expressing the views of those not voting with the winning side. This sort of report can place the committee's recommendation to the governing board in a useful perspective.

In addition to submitting a written report, the governing board should insist upon a presentation of the committee's recommendations at a public meeting. This is best done after the written report has been delivered to the governing board and its members have had time to read it. After the governing board is familiar with the committee's recommendations, committee members should be invited to meet with the governing board to discuss the committee's findings.

Finally, the committee members should be thanked — both publicly and with a personal note — for assisting the city. This is an important detail, especially if the city plans to ask other citizens for similar help in the future.

Making Final Decision

Reference Number: MTAS-1118

No city council may delegate final decision-making authority to an unelected citizen advisory committee. From start to finish, this simple fact must be understood clearly by everyone involved in the issue: the committee members, the news media, the general public, the staff, and the governing board members themselves. Even when the committee report is brilliantly written and the committee members worked especially hard, it is the city's governing board that must make the final decision on the recommendations.

This often is a difficult fact for members of a citizen committee to accept, and it is not unusual for members to feel let down if the city council rejects the committee's recommendations goes in a different direction. This underscores the importance of the governing board's initial instructions to the citizen committee, that every member of the committee knows from the outset that the governing board very well may pass on the advice it receives.

When an advisory committee's advice is rejected, it is important that it be done in a way that does not embarrass the citizens who volunteered their time to help the city. The governing board may want to emphasize that their final decision is the result of interpretational differences (politics) rather than the scholarship of the committee members.

Conclusion

However helpful they can be, there are inherent risks associated with appointing citizen groups to advise the city. Considerable care must be taken selecting committee members, and it is even more important that the committee is given specific instructions about their purpose, role and methods. Otherwise, the advice provided by these committees likely will be no more valuable to the city than the advice of any randomly selected group of citizens. A well-chosen group of citizen advisors, given clear and specific direction on the help sought by the governing board, can provide valuable suggestions to city hall and help resolve difficult problems.

Links:
[1] mailto:robert.a.greene@state.tn.us
[2] https://www.mtas.tennessee.edu/reference/mtas-model-code-ethics

[3] mailto:ethics.counsel@tn.gov
[4] https://www.mtas.tennessee.edu/reference/bill-provisions-tca