



Municipal Technical Advisory Service  
INSTITUTE *for* PUBLIC SERVICE

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## Charters

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Dear Reader:

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

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

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

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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 Dillon'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 home 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](mailto:robert.a.greene@state.tn.us) [1].

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### **Links:**

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