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# Ordinance Drafting and Enactment: Issues and Recommendations

Steve Lobertini

*Municipal Technical Advisory Service*

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# ORDINANCE DRAFTING AND ENACTMENT:

## *Issues and Recommendations*

Steve Lobertini, Municipal Codification Consultant

THE UNIVERSITY of TENNESSEE 

MUNICIPAL TECHNICAL ADVISORY SERVICE

*In cooperation with the Tennessee Municipal League*

**THIS PUBLICATION IS IN TWO PARTS.**

**Part 1** contains a discussion of legal issues relevant to ordinance drafting, with sample charter provisions from Tennessee city charters.

**Part 2** contains a summary of issues and an ordinance-drafting guide.



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## *Issues and Recommendations*

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By sharing information, responding to client requests, and anticipating the ever-changing municipal government environment, MTAS promotes better local government and helps cities develop and sustain effective management and leadership.

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# ORDINANCE DRAFTING AND ENACTMENT:

## *Issues and Recommendations*

### PART 1 LEGAL ISSUES AND CHARTER SAMPLES

#### I. INTRODUCTION

MTAS has been producing municipal codes of ordinances, municipal code updates, and municipal charters for more than 50 years. We have received thousands of ordinances over the years for codification. While many of those ordinances were clearly written, many had similar problems. This publication will address the issues underlying some common challenges and offer suggestions. Legal support will be provided for the assertions made. However, the intent of this publication is to aid city recorders, attorneys, and others who draft ordinances for Tennessee cities. Because of this broad targeted readership, detailed legal reasoning and conclusions of fact for specific issues generally will not be covered. City attorneys and other legal professionals should use this publication as a starting point and do further research when drafting ordinances.

#### II. THE CITY CHARTER

The city charter is to the ordinances of a city as the Tennessee Constitution is to the state statutes.<sup>i</sup> The charter has often been termed the “organic law” of a city; it is the document that gives a city its life and its power.<sup>ii</sup>

The relationship and importance of the city charter to its ordinances was succinctly stated by the Tennessee Court of Appeals as follows:

The proposition is self-evident, therefore, that an ordinance must conform to, be subordinate to, not conflict with, and not exceed the charter, and can no more change or limit the effect of the charter than a legislative act can modify or supersede a provision of the constitution of the state.<sup>iii</sup>

This publication discusses the city charter as it relates to ordinance adoption procedures and drafting ordinances. However, a city charter generally includes many other provisions relating to ordinances. The charter should be consulted whenever the governing body considers legislation, as local action undertaken that is not in compliance with charter requirements is void as *ultra vires*.<sup>iv</sup> MTAS maintains a database of Tennessee charters at [www.mtas.tennessee.edu](http://www.mtas.tennessee.edu). These charters are updated every year as amendments are passed by the Tennessee General Assembly. Always check your charter before adopting any rules, regulations, resolutions, or ordinances. It may speak to the specific issue you are dealing with.

In Tennessee, ordinance adoption procedures may vary from one charter to another. There is some uniformity for cities with general law charters, of which there are 119: 67 with the general law mayor-aldermanic charter<sup>v</sup>; 49 with the general law manager-commission charter<sup>vi</sup>; and two with the



general law modified city manager-council charter.<sup>vii</sup> A sample ordinance form is included in Part VI of this publication for the mayor-aldermanic and manager-commission charters. Ordinance adoption procedures for the remaining 225 cities vary considerably. Three cities have the metropolitan form.<sup>viii</sup> There are 212 cities with private acts charters, and many of these charters contain no ordinance adoption procedures. A few of those cities have adopted ordinances outlining the procedures, but some cities have no formal ordinance adoption procedures at all.

To make a change in private acts charters, a local governing body must have a bill introduced in the Tennessee General Assembly. After passage there, the act usually must be ratified locally. The Tennessee Constitution provides that “any act of the General Assembly private or local in form or effect applicable to a particular...municipality... shall be void and of no effect unless by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality... or requires approval in an election by a majority of those voting in said election...”<sup>ix</sup> Most private acts contain a 30-day deadline by which they must be ratified locally. Very few acts amending private acts charters require an election for ratification. A few acts contain no deadline. In such cases, the act must be ratified before December 1 of the year in which it passes, or it is void.<sup>x</sup> Each act passed by the General Assembly is published by the office of the Tennessee Secretary of State on its Web site at <http://www.state.tn.us/sos/acts/acts.htm>.

Cities with home rule charters, of which there are 14 in the state, may also amend their own charters.<sup>xi</sup> Private acts charters and home rule charters are mentioned here as they are the source of most charter ordinance requirement variations

in Tennessee municipal law. For further discussion on charter types, see “Getting to Know (And Maybe Love) Your Municipal Charter” 1996 revision, by Sidney D. Hemsley, MTAS senior law consultant.

### III. ORDINANCE ADOPTION PROCEDURES IN GENERAL

Adoption procedures in the city charter must be followed when drafting and adopting ordinances. In this publication, numerous references to charter provisions from city charters will be given to illustrate by example the various ordinance adoption requirements and to provide examples for cities that either have no adoption procedures provided by charter or are considering modifying the adoption procedures in their charters.

Many charters contain a requirement that ordinances must be in writing upon their introduction.<sup>xii</sup> If no such charter requirement exists, however, an ordinance must be introduced in writing. A city council is the local legislative body of a city, and the ordinances passed under the power granted in the charter have the “force of laws passed by the Legislature.”<sup>xiii</sup> Thus, an ordinance is a legislative act, and it must be written, as the “legislative will can be expressed in no other manner.”<sup>xiv</sup>

While it might seem obvious that ordinances must be in writing, as many charters require ordinances to be *read* a certain number of times, often a reference in meeting minutes is all we receive for codification. Generally, since the 1990 legislative session of the Tennessee General Assembly, when a municipal code is adopted or updated, any defects in the adoption of individual ordinances are cured.<sup>xv</sup> However, between the time the “ordinances” were passed without being reduced to writing and the time the municipal code was adopted or updated, those “ordinances” were not valid enactments.



No particular ordinance form or adoption procedures are prescribed by general law to apply to cities whose charters contain no adoption procedures.<sup>xvi</sup> However, for consistency, and to benefit officials and employees who are unfamiliar with the procedures the city has followed in the past, formal adoption procedures should be provided, if not by a charter amendment then by ordinance, and distributed to members of the governing body, the city attorney, and the city recorder. Informal procedures of council may be waived.<sup>xvii</sup> So, even if the informal practice has been to adopt ordinances on two readings, a city may go to one or three readings without any formal record of the change.

Courts have held that the purpose of formal ordinance adoption procedures is to “prevent hasty and ill-considered legislation.”<sup>xviii</sup> Ordinance adoption procedures provide a necessary consistency in legislative enactments. Also, if those interested in a particular legislative issue have no notice of a reliable legislative procedure, public input on specific issues may be hindered.

#### IV. ORDINANCE ELEMENTS

This section reviews ordinance requirements beginning with the ordinance number and ending with signatures. Not all elements of an ordinance may be required by your city charter. If an element is not required by charter, other than the requirement that it be in writing, unless noted it is not required by law.<sup>xix</sup>

##### A. Ordinance number

Unless your charter requires you to number your ordinances, a number is not required by law. However, all ordinances should be numbered. A number facilitates record keeping and may provide at a quick glance the relationship in time of one ordinance to another. Ordinance numbers should continue in sequence from year to year and contain

the year as well as the sequence number. If the last ordinance in 2003 was “Ordinance #2003-44,” the first ordinance in 2004 should be “Ordinance #2004-45.” Some charters provide a specific method of numbering that differs from this recommendation. The city of Medon Charter, § 12,<sup>xx</sup> contains this provision:

Ordinances shall be identified with a two (2) part numeration. The first part shall consist of the two (2) digits representing the last two (2) digits of the year the ordinance was introduced. The second part shall be the number of its order of introduction for that year.

Follow your charter ordinance numbering requirement if your charter contains such a requirement, even if it differs from our recommendation. We ask that numbers continue in sequence from year to year and include the year of enactment because we can tell from the ordinance numbers when we have all of the ordinances for a given year. This helps us with our municipal code production.

If your charter has no requirement to the contrary, you should number your ordinances *after* they are passed. You will know that ordinances with numbers actually passed on final reading. Some city charters require ordinances to be numbered after their passage, generally by the city recorder. The Town of Westmoreland Charter, Art. IV, § 3,<sup>xxi</sup> provides that “every Ordinance, when filed with the Recorder, shall immediately be numbered....” If you number ordinances before they pass you will have gaps in numbers and will not be able to tell from the numbers if a valid ordinance is missing. Ordinances that are postponed or fail to pass final reading should be noted in the meeting minutes with a brief description of the subject matter and the action taken, but not numbered until and unless they are passed later.



## B. Caption, or “title”

“In absence of charter provisions relating thereto a municipal ordinance is not required to have a caption.”<sup>xxxii</sup> Several city charters in Tennessee have such a requirement. Art. IV, § N of the City of Lawrenceburg Charter<sup>xxxiii</sup> provides that each “ordinance shall relate to a subject which shall be generally expressed in a caption...”

“The ‘subject’ only is called for in the title, not the story...”<sup>xxxiv</sup> That quote from *Texas Co. v. Fort* sums up the purpose of the caption: to identify the subject matter of an ordinance without going into detail. Put another way, “[t]he title discloses the result aimed at; the method is for the body of the [ordinance].”<sup>xxxv</sup> That case dealt with a state statute, but the principle applies equally to ordinances.

While every provision of an ordinance must relate to the subject expressed in the title, it should leave the details for the body of the ordinance.<sup>xxxvi</sup> If details were required in the caption, “it would not be necessary to enact anything except the title.”<sup>xxxvii</sup> Some cities have tried to touch upon each small issue in an ordinance, perhaps out of fear of leaving out something important. The most protracted caption we have seen in our codification work contained 454 words!

“Every provision in the body of the ordinance is related directly to the provisions contained in the caption.”<sup>xxxviii</sup> The caption “is sufficient if it fairly advises the city council and the public of the real nature and subject matter of the legislation sought to be enacted, and if the minor features of the ordinance have a reasonable and natural connection with the subject named in the title.”<sup>xxxix</sup>

Many early cases dealing with captions, such as the *Fort* case cited above, considered state statutes. However, they were frequently cited by the courts

when ordinance captions were at issue.<sup>xxx</sup> The court in *City of Kingsport v. Jones*,<sup>xxxi</sup> cited *Memphis St. R. Co. v. Byrne*<sup>xxxii</sup> as authority for its holding that the caption of an ordinance may be considered when interpreting the intent of the legislative body in enacting an ordinance,<sup>xxxiii</sup> although *Byrne* dealt with a state statute. The court held that it may look to the caption to help determine the legislative intent of a city’s governing body in adopting the ordinance.<sup>xxxiv</sup>

The restriction in Art. 2, § 17, of the Tennessee Constitution limiting captions of state statutes to one subject does not apply to municipal ordinances.<sup>xxxv</sup> However, your charter may contain such a requirement. The City of Gatlinburg Charter, § 6,<sup>xxxvi</sup> provides that ordinances “shall not contain more than one subject, which shall be clearly stated in the title.” If your city charter contains a similar requirement, it must be followed.

If there is no caption requirement in your city’s charter, it is recommended that you include one in each ordinance. A caption makes it easier to identify and locate an ordinance. It also may facilitate enactment as many charters contain provisions allowing a city to read ordinances by caption only on one or more of its readings. The general law manager-commission charter allows cities to establish by ordinance the procedure to read ordinances by caption only on each reading.<sup>xxxvii</sup>

Many city charters contain a publication requirement that may be satisfied by publication of the caption only; see the general law mayor-aldermanic charter.<sup>xxxviii</sup> For further discussion of publication requirements, see Section V.

For a discussion of captions as they relate to ordinance amendments between readings, see subsection I.



While a caption may seem trivial, it has been the subject of so much litigation that one court declared that perhaps “no other provision of our Constitution has been more prolific of discussion in our reported cases.”<sup>xvix</sup> Enough said.

### **C. Preamble, or “whereas” clauses**

The preamble is generally employed as a “prefatory statement or explanation or a finding of facts by the power making it purporting to state the purpose, reason, or occasion for making the law to which it is prefixed.”<sup>xl</sup>

If the meaning or intent of an ordinance is at issue in a court of law, the court may look to the preamble to determine the intent of the local governing body in enacting the ordinance and as an aid in interpreting its provisions.<sup>xli</sup> However, if the meaning of the ordinance is clear, the “preamble can neither limit or extend the meaning of the ordinance.”<sup>xlii</sup> The preamble is not a part of the “controlling provisions of the ordinance.”<sup>xliii</sup> Therefore, it should be placed before the ordination, or enacting clause. The author is aware of no city charter in Tennessee that requires a preamble to ordinances.

### **D. Ordination clause**

The ordination clause follows the caption of the ordinance if there is no preamble. Many charters refer to it as the “enacting” clause. See the Town of Gibson Charter, § 12.<sup>xliv</sup> A few call it the “style” of an ordinance; see City of Ridgeside Charter, § 12.<sup>xlv</sup> The usual form is “Be it ordained by the board of mayor and aldermen (or commissioners, etc., depending on the title of the governing body) of the Town (or City) of \_\_\_\_\_.” Most city charters in Tennessee provide the exact wording for the ordination clause. If your charter provides an ordination clause, it should be included

in all of your ordinances exactly as it is written in the charter.

If a city substantially complies with the ordinance adoption procedures in its charter the ordinance may still be valid.<sup>xlvi</sup> Adoption procedures are given a reasonable construction to prevent “frustrating the legislative process at the municipal level.”<sup>xlvii</sup> Still, no Tennessee cases have decided the precise issue. It is a simple matter to always include the exact language of the ordination clause in ordinances, and litigation may be avoided by doing so.

Based on authority from other states, failure to include the exact language of the ordination clause may or may not invalidate an ordinance.<sup>xlviii</sup> The weight of authority would uphold an ordinance in spite of language in the ordination clause differing from charter requirements, especially where there is substantial compliance.<sup>xlix</sup>

Even if your city charter does not provide an ordination clause, it is recommended that you include one in all of your ordinances. The ordination clause introduces the controlling provisions of the ordinance and should be inserted before all matter intended to have the force of law.

### **E. Controlling provisions**

This section covers in general terms a few important issues to consider when drafting the controlling provisions of any ordinance. However, because countless fact situations may apply under each issue, specific scenarios will not be discussed.

The following general principles were articulated by the Tennessee Supreme Court in *Jones v. Nashville*.<sup>l</sup>



An ordinance must be

1. “Consonant with the constitution and statutes of the United States and of the State, and with the general principles of the common law;
2. “authorized by the charter of the corporation or general laws applying thereto;
3. “consistent with the general objects and purposes of [the city’s] creation;
4. “general, and applicable alike to all persons and property affected by them;
5. “certain in their application and operation, and their execution not left to the caprice of those whose duty it is to enforce them;
6. “just;
7. “adapted to the locality and affairs which it is intended they shall control and affect;
8. “general in their nature; [and]
9. “impartial in their operation and effect;”

[An ordinance must not]

10. “be harsh and oppressive; [or]
11. “discriminate in favor of or against any class of persons or property.”

“An ordinance which is free from the objectionable features enumerated, and contains those stated to be necessary, may, as a general rule, be said to be reasonable and valid...”<sup>li</sup>

Of course, what is reasonable varies depending on the situation, and there are innumerable published cases to provide guidance. Item five above has been discussed in terms of “definiteness,” and in many cases dealing with reasonableness, definiteness is a prominent, if not the determinative, issue. Since an ordinance must be “general, and applicable alike to all persons and property affected by them,”<sup>lii</sup> and must apply to different facts in different situations, it is “a matter of impossibility always accurately to define the offense in such precise terms as to relieve the ordinance wholly from any charge of

indefiniteness.”<sup>liii</sup> However, an ordinance that “either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application denies due process of law.”<sup>liv</sup>

To avoid problems with definiteness, the guiding principle in drafting the controlling provisions of an ordinance is to consider the conduct to be regulated and to state the regulations in plain and simple language “so that the average man may with due care, after reading the same, understand whether he will incur a penalty for his actions or not.”<sup>lv</sup> “The necessity for definiteness is founded upon the principle that one may not be lawfully punished for a violation of a statute or ordinance which does not by its terms give notice of the nature of the offense.”<sup>lvi</sup>

The general law prescribes no set phrases for the body of an ordinance.<sup>lvii</sup> However, you should avoid using legal terms and technical language unless it is necessary. In such cases, if you have doubts as to whether those affected by the ordinance will understand the language, add definitions and explanatory sentences. If you are still unsure, ask someone to read it who is not familiar with the issues or the subject matter.

A more detailed discussion of the language of ordinance drafting appears in Part 2—Summary of Issues and Ordinance Drafting Guide, Section II.

## F. Severability clause

It is a well-settled principle that an ordinance may be valid in some respects and invalid in others,<sup>lviii</sup> and that the invalidity of part of an ordinance does not necessarily render the entire ordinance void.<sup>lix</sup> A severability clause in an ordinance offers a clear message of the intent of the legislative body that if a part of an ordinance is held invalid by a court,



the remaining portions shall remain intact. A court may consider this and give effect to the clause if an ordinance is challenged based on the invalidity of one or more of its parts.<sup>lx</sup> At least one court has held that a court has the *duty* to give effect to a severability clause in an ordinance.<sup>lxi</sup>

A severability clause is often used in ordinances dealing with controversial constitutional issues and generally takes the following form:

If any section, phrase, sentence or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision; and such holding shall not affect the validity of remaining portions thereof.

Here is a second sample:

If a part of this ordinance is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this ordinance is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

A severability clause is also often seen in very long ordinances, such as sewer use ordinances.

Including a severability clause in an ordinance, however, does not guarantee that a finding that part of an ordinance is unconstitutional will not invalidate the whole ordinance. The Sixth Circuit Court of Appeals, in *Deja Vu of Cincinnati, L.L.C. v. Union Township Board of Trustees*,<sup>lxii</sup> held that failure to provide for prompt judicial review of adverse licensing decisions was essential to the enforcement of an entire sexually oriented businesses ordinance and was not severable.

## G. Date of effect

Most charters provide an effective date for ordinances. The most common forms are

1. Upon an ordinance's final passage. "This ordinance shall take effect from and after its passage, the welfare of the city requiring it." City of Niota Charter, § 8;<sup>lxiii</sup>
2. At a specified time after final passage. "No ordinance shall take effect until fifteen (15) days after its final passage" City of Kingsport Charter, Art. IV, § 2;<sup>lxiv</sup>
3. Upon final passage, provided that a different date of effect may be specified in the ordinance. "Every ordinance shall be effective upon final passage unless by its terms the effective date is deferred." City of Friendsville Charter, § 43;<sup>lxv</sup>
4. Upon final passage except for penal ordinances. "No ordinance of a penal nature shall take effect until ten (10) days after the final passage thereof. Any other ordinance...may be enacted to take effect forthwith upon its final passage..." City of Townsend Charter, § 25;<sup>lxvi</sup>
5. Varied, depending on whether the effective date is included in the ordinance. Ordinances shall "contain this provision, that 'This ordinance shall take effect from and after its passage, the welfare of the city requiring it.' Otherwise the same shall not take effect until twenty (20) days after its passage." City of Greenbrier Charter, § 9;<sup>lxvii</sup>
6. No effective date, e.g., Lookout Mountain Charter, Article IX, § 1.<sup>lxviii</sup>

There is authority in other jurisdictions to the effect that where no date of effect is provided in



an ordinance and there is no publication requirement, the ordinance becomes effective upon its final passage.<sup>lxi</sup> However, no Tennessee case was found that considered the issue. It is recommended that an effective date be included in each ordinance whether or not the charter requires it.

For certain types of ordinances, the date of effect is provided by state law.<sup>lxx</sup> In such cases, the state law date is the effective date.<sup>lxxi</sup> Regardless of the date of effect of an ordinance, however, the ordinance is considered adopted on its final reading though it may not be operative until the effective date.<sup>lxxii</sup> After final reading, the ordinance may not be repealed or amended except by another ordinance, even if the effective date has not passed and it is not yet operative.<sup>lxxiii</sup>

## H. Number of readings

Charter adoption procedures ordinarily provide the number of readings required for enactment of ordinances. There is no general law requirement applying to all cities as to the number of readings.<sup>lxxiv</sup> A few city charters do not specify the number of readings required.<sup>lxxv</sup> In charters that contain such a requirement, the number of readings varies from one, “All ordinances...shall pass one reading...,”<sup>lxxvi</sup> to three, “no ordinance shall become a law...unless the same shall have passed three readings...”<sup>lxxvii</sup> By far the most common number of readings required is two.<sup>lxxviii</sup>

Some charters require the complete ordinance to be read on one or more of its readings, e.g., “the city Council may read the caption of an ordinance at the first reading and shall read the ordinance in its entirety on the second reading.”<sup>lxxix</sup> Many others allow passage by reading the caption only.<sup>lxxx</sup>

Several city charters require a certain amount of time between readings with language such as,

“Every ordinance must be approved on two (2) readings not less than one (1) week apart...”<sup>lxxxii</sup> A few charters require a certain amount of time to pass between first reading and final passage of an ordinance.<sup>lxxxiii</sup> These examples, by including a time interval and, in the first example, the requirement that the ordinance remain on file between readings, illustrate the purpose of such a requirement: to make the proposed ordinance available for inspection, and to allow interested parties a reasonable amount of time to review it.

## I. Amendments between readings

Until an ordinance is passed on final reading, it is only a proposed ordinance and may be amended between readings unless the charter or general law provides otherwise.<sup>lxxxiii</sup> The Tennessee Supreme Court, in *Metropolitan Government of Nashville and Davidson County v. Mitchell*,<sup>lxxxiv</sup> held that even substantial amendments may be made to an ordinance between readings as long as the changes are “germane to and within the scope of the subject” of the ordinance as originally written. In the absence of a charter provision to the contrary, a substantial amendment to an ordinance may be made as long as the changes relate to the ordinance as first introduced as expressed in its caption, or, if the ordinance has no caption, as expressed in the original subject of the ordinance.<sup>lxxxv</sup>

While the body of an ordinance may undergo substantial amendment between readings, the caption itself may not. If the caption is substantially changed or modified to add “new or foreign matter” it essentially creates a new ordinance and must be passed as a new ordinance.<sup>lxxxvi</sup> The *Mitchell* court explained that as long as the subject of the ordinance as expressed in the caption was not “substantially or materially altered,” a new ordinance was not required.<sup>lxxxvii</sup> Unfortunately, what is meant by “substantially” and



“materially” is not explained in that case. A 1994 court of appeals case, in which the word “food” was replaced with the word “wine” in an ordinance caption between readings, offers a little help in this regard. In *Hourglass Lounge, Inc. v. City of Johnson City*,<sup>lxxxviii</sup> the court held that removing the word “food” from the caption of an ordinance regulating alcohol sales and replacing it with “wine” between readings did not transform an ordinance amended between readings into a new ordinance.<sup>lxxxix</sup> The court stated that adding the word “wine” was “pure surplusage” because the caption already contained the word “alcoholic beverages,” and the state law definition of alcoholic beverages included wine.<sup>xc</sup> The court said that removing the word “food” made the ordinance less restrictive and amounted to correcting a typographical error in the original.<sup>xci</sup> The change to the caption in this case was not a change to the subject matter of the ordinance.

Several city charters provide that if an ordinance is amended between readings, the amendment must be passed as a new ordinance.<sup>xcii</sup> One charter provides that “...the second reading may be by title only except that any amended provisions shall be read in full.”<sup>xciii</sup> Some charters require a different procedure for “material” changes.<sup>xciv</sup> At least one city charter provides that a third reading is required for an ordinance only if it was amended on its second reading.<sup>xcv</sup>

## J. Signatures

Most cities include a line at the bottom of each ordinance for the mayor’s signature and a line for the recorder’s signature. Many charters require cities to include one or both of these signatures. The mayor’s signature requirement often varies from charter to charter.

The mayor may be required to sign the ordinance in a ministerial capacity. This is generally after the

ordinance is adopted.<sup>xcvi</sup> In such cases, the signature is not a prerequisite to the ordinance’s valid enactment.<sup>xcvii</sup>

The mayor may be required to sign the ordinance or veto it and return it to the governing body with reasons for the veto, and the governing body may pass the ordinance over the mayor’s veto, usually by two-thirds vote. A few charters require only a majority vote.<sup>xcviii</sup> Some charters provide that if the mayor does not return the signed ordinance to the governing body within a certain time, the ordinance is valid without the signature.<sup>xcix</sup>

A few charters apparently make the mayor’s signature a prerequisite to the ordinance’s valid enactment.<sup>c</sup> Whether or not the absence of a signature in such cases would invalidate an otherwise properly enacted ordinance depends largely on the language of the charter.<sup>ci</sup> If the charter makes the mayor a distinctive part of the legislative process, the signature may be required for the ordinance to take effect.<sup>cii</sup> Still, if the mayor’s approval is not required, signing the ordinance may be considered ministerial, and the ordinance valid.<sup>ciii</sup> There is no general rule to apply here. Each question turns on the exact language of the charter, and charter language varies considerably from city to city.

Only one Tennessee case has ruled on the precise issue.<sup>civ</sup> That case considered specific charter provisions pertaining only to the adoption of franchise ordinances.<sup>cv</sup> One charter section in that case provided that no franchise “ordinance shall become effective until thirty days after it has passed both boards and been signed by the mayor.”<sup>cvii</sup> Another charter section required “approval of the mayor” before a franchise ordinance could take effect.<sup>cvii</sup> The court held that the mayor’s approval as evidenced by his signature was



a “condition precedent” to a franchise ordinance’s valid enactment.<sup>cxviii</sup> As noted in subsection G of this publication, “Date of effect,” several cities’ charters contain a savings clause in which an ordinance is valid absent the mayor’s signature if the mayor does not return the signed ordinance to the governing body within a certain number of days. Often this clause appears with provisions governing the mayor’s veto of proposed ordinances.

There is no signature requirement in a few charters. However, it is recommended that the recorder and the mayor sign each ordinance in such cases. If an ordinance is at issue in a court of law, it is admissible in evidence only when authenticated, i.e., proved to be a city ordinance.<sup>cxix</sup> The parties to the suit may agree, or stipulate, to the existence and accuracy of the ordinance.<sup>cx</sup> Subject to certain procedures in court, certified copies of ordinances may be self-authenticated.<sup>cxii</sup> However, when authenticity is at issue, the recorder is the proper person to testify as to the ordinance’s authenticity.<sup>cxiii</sup> The recorder’s signature on the ordinance, even if not required by charter, may facilitate resolution of the authenticity issue in the city’s favor and should be included in every ordinance after its passage on final reading. The mayor should sign ordinances as presiding officer. Based on ordinances we have received for codification, it would appear that most cities with no signature requirements in their charters have the mayor and recorder sign all ordinances.

## **V. Notice, publication, and public hearing**

Unless required by charter or state or federal law, notice of pendency of an ordinance is not required.<sup>cxviii</sup>

Publication requirements provided by charter vary considerably in Tennessee. In some charters posting a copy of the ordinance at the city hall, county

court house, or other specified public place is sufficient. A few charters require publication of an entire ordinance, which can be burdensome for very long ordinances. However, when notice is required it is best to follow the requirements closely.

City charters commonly require publication of notice of adoption of an ordinance in a “newspaper of general circulation” in the city. A Tennessee Attorney General opinion has stated that where publication of a notice is required by ordinance or statute in a “newspaper of general circulation,” publication on an Internet site would “probably not” satisfy the requirement.<sup>cxiv</sup> The opinion also stated, however, that under the right circumstances, depending on the particular ordinance in question, the requirement might be met.<sup>cxv</sup> The opinion didn’t give examples of circumstances that might meet the requirement.

In one court of appeals case, *Town of Surgoinsville v. Sandidge*,<sup>cxvi</sup> publishing notice of a public hearing on a zoning ordinance 11 days prior to its adoption, not 15 days prior as required by statute, combined with failure to comply with a charter publication requirement, rendered an ordinance void. In that case, the charter required the city to publish each ordinance passed by the governing body, “or its caption and a summary of [the] ordinance ... after its passage in a newspaper of general circulation in the municipality.”<sup>cxvii</sup> The court held that the charter requirement to publish the caption and a summary of the ordinance was not met when an article in an area newspaper generally describing its provisions noted that the ordinance was passed.<sup>cxviii</sup> The court cited cases from other states that held that unpaid newspaper articles did not satisfy notice requirements, and held that the article did not meet the charter’s “summary” requirement or its “caption” requirement.<sup>cxix</sup>



In another case, *Hutcherson v. Criner*,<sup>cxx</sup> where notice of public hearing on a zoning ordinance was insufficient, but the ordinance wasn't challenged for over 10 years, the ordinance was not void. The *Hutcherson* court held that a procedural irregularity would not invalidate an ordinance when there has been "long public acquiescence" in its substantive provisions.<sup>cxxi</sup>

Notice and hearing requirements in zoning ordinance statutes are widely regarded as required under due process of law.<sup>cxxii</sup> Zoning ordinances were at issue in both *Sandidge* and *Hutcherson*. However, it is our recommendation that notice and publication requirements, whether required by city charter or provided by statute, be strictly followed for every ordinance.

A few city charters require published notice of proposed ordinances *prior* to final reading.<sup>cxxiii</sup> Another charter gives the board the choice of publishing a caption and summary of each ordinance either prior to or following final reading, but failure to publish does not invalidate the ordinance.<sup>cxxiv</sup> Many charters provide that failure to publish notice of a pending ordinance or of an adopted ordinance will not affect the validity of the ordinance.<sup>cxxv</sup>

In a few charters, only certain types of ordinances must be published prior to final reading.<sup>cxxvi</sup> Penal ordinances or their captions are required to be published in several charters.<sup>cxxvii</sup> The most common requirement is that an ordinance may not take effect until the ordinance or an abstract or caption of the ordinance is published, often within 10 days after its final adoption.<sup>cxxviii</sup>

Notice and public hearing is required by statute for certain types of ordinances. See the following:

T.C.A. § 6-51-102—Annexation. (4) "Notice of the time, place, and purpose of the public hearing shall be published in a newspaper of general circulation in the municipality not less than fifteen (15) days before the hearing."<sup>cxxix</sup>

T.C.A. § 6-51-201—Contraction of boundaries.<sup>cxxx</sup>

T.C.A. § 6-54-508—Adoption of municipal code.<sup>cxxxi</sup>

T.C.A. § 6-56-206—Budget. (a) "A public hearing shall be held on the proposed budget ordinance before its final adoption by the governing body, at such time and place as the governing body shall direct."

(b)(5) "The publication shall be in a newspaper of general circulation and shall be published not less than ten (10) days prior to the meeting where the governing body will consider final passage of the budget."<sup>cxxxii</sup>

T.C.A. § 7-32-105—Improvements by special assessment.<sup>cxxxiii</sup>

T.C.A. §§ 7-84-205 - 209—Central business improvement districts.<sup>cxxxiv</sup>

T.C.A. § 7-84-409—Central business improvement districts—special assessments.<sup>cxxxv</sup>

T.C.A. §§ 7-84-514 - 515—Central business improvement districts, alternative method of governance.<sup>cxxxvi</sup>

T.C.A. § 13-7-203—Zoning ordinance. (a) "Before enacting the zoning ordinance or any amendment thereof, the chief legislative body shall hold a public hearing thereon, at least fifteen (15) days' notice of the time and place of which shall be published in the official municipal journal or in



a newspaper of general circulation in the municipality.”<sup>cxxxvii</sup>

T.C.A. § 13-7-303—Regional zoning outside municipality.<sup>cxxxviii</sup>

T.C.A. § 42-3-104—Regional airport authority.<sup>cxxxix</sup>

T.C.A. § 42-6-106—Airport zoning.<sup>cxl</sup>

T.C.A. § 54-18-205(a) [Official highway map] “Upon receipt of the certified map, the legislative body shall hold a public hearing thereon, notice of the time and place of which shall be given not less than fifteen (15) days previous to the time fixed therefor by one (1) publication in a newspaper of general circulation in the county or municipality.

(b) “Such notice shall state the place at which the proposed official map may be examined.”<sup>cxli</sup>

T.C.A. § 54-18-206—Adoption and amendment of official highway map (resolution or ordinance).

(a) “After the public hearing, the legislative body may adopt, by resolution or ordinance, the map as certified by the planning commission as the official map.”<sup>cxlii</sup>

T.C.A. § 67-5-1702—Levy in excess of certified rate. “No tax rate in excess of the certified tax rate as provided for in § 67-5-1701 shall be levied by the governing body of any county or of any municipality until a resolution or ordinance has been approved by the governing body according to the following procedure:

- (1) The governing body shall advertise its intent to exceed the certified tax rate in a newspaper of general circulation in the county, and the chief executive officer of the county or municipality, as appropriate, shall within thirty (30) days after publication furnish to the state board of equalization an affidavit of publication; and
- (2) The governing body, after public hearing, may adopt a resolution or ordinance levying a tax rate in excess of the certified tax rate.”<sup>cxliii</sup>

## PART 2 SUMMARY OF ISSUES AND ORDINANCE DRAFTING GUIDE

### I. ORDINANCE ELEMENTS

Always check your city charter for requirements applicable to each of the following subsections.

#### A. Ordinance number

- A number is not required by general law. If your charter does not require one, there is no number required. All ordinances should be numbered, however.
- If your charter does not require a number prior to adoption on final reading, this should be left blank until the ordinance is passed.
- If the charter provides the form for the ordinance number, use charter form. If the

charter does not provide the form, number each ordinance after it is adopted to include the year of passage and the number in sequence for the ordinance. Example: If the last ordinance passed in 2002 was 2002-44, the first ordinance passed in 2003 should be numbered 2003-45.

#### B. Caption, or title

- If not required by charter, a caption is not required. There is no general law requiring a caption to an ordinance.



- Include a caption in every ordinance, whether required by charter or not. Follow charter requirements, if applicable. Most charters allow ordinance readings by caption only. Most charter publication requirements allow publication of the caption only.
- Unless the charter prohibits it, an ordinance may include more than one subject, e.g., it may both repeal one ordinance and enact another in its place. However, every broad subject included in the ordinance must appear in the caption.
- Captions should be brief and to the point. They should describe generally the subjects of the ordinance but not the details.
- A court may look to the caption to discern legislative intent in its enactment.
- If an ordinance is amended between readings, the amendments must relate to the original subject of the ordinance as expressed in the caption, or a new ordinance must be passed.
- Use clear, everyday language.
- If possible, captions should be one to two lines in length.

### **C. Preamble, or “whereas” clauses**

- Include “whereas” clauses or a preamble to provide history, legal authority, or purpose of the ordinance when these are not intended to be part of the controlling provisions of the ordinance.
- A court may use the “whereas” clause to discern legislative intent.

### **D. Ordination, or enacting clause**

- Include the exact wording of the charter for the ordination clause.
- If charter does not provide an ordination clause, include one in every ordinance. Sample form: “Be it ordained by the [insert name of

your city’s governing body, e.g., city council] of the City of \_\_\_\_\_, that:...”

- Ordination clause must be inserted immediately before the controlling provisions, or body, of the ordinance.

### **E. Controlling provisions**

- You must have the authority to enact an ordinance on the subject in question and to the extent of the regulations in the ordinance. These are legal issues that must be determined by your city attorney.
- Include definitions only for words that need defining. Common words should have common meanings in the ordinance. Definitions should be at the beginning of the ordinance.
- Avoid technical terms unless necessary. People of ordinary intelligence and experience must be able to understand what is required of them. Use definitions and explanatory information.
- The meaning of the ordinance must be clear so that not only those who are regulated by it understand it, but also so that those who enforce the ordinance may apply it fairly.
- Use short sentences and common words.
- Break up long paragraphs into smaller paragraphs.
- Use an outline form with subheadings if necessary.

### **F. Severability clause**

- Not required by general law; probably not required by charter.
- Include in controversial ordinances, especially with constitutional issues, and very long ordinances. Court will look to severability clause as evidence that the legislative body intended provisions to be severable.



- Severability clause will not guarantee that where one part of the ordinance is unconstitutional, the remainder is valid. The court may still find that the unconstitutional provisions are not severable.

### **G. Date of effect**

- Many charters provide the date of effect, and the wording varies considerably. Use your city charter's wording, if provided.
- Always include the date of effect even if there is no charter requirement. It provides notice to those affected by the ordinance.
- If there is no charter requirement and the ordinance takes effect upon final passage, use a form similar to the following: "This ordinance shall take effect upon its final passage, the public welfare requiring it."
- If there is no charter requirement and a date later than that of final passage is desired, use a form similar to the following: "This ordinance shall take effect 15 days after its final passage [insert a different time delay, as necessary], the public welfare requiring it."
- State law establishes the date of effect for certain types of ordinances. Consult your city attorney on this issue if you are unsure.

### **H. Number of readings**

- Always fill in the dates of passage on every ordinance.
- Include the number of readings required by charter.

### **I. Amendments between readings**

Until final reading an ordinance is a "proposed ordinance." As such, a proposed ordinance may be amended between readings unless

- Your city charter provides otherwise;
- New subject matter is introduced in the

proposed ordinance that does not relate to the original subject or subjects, as expressed in the caption of the ordinance; or

- It is prohibited by state or federal law.

### **J. Signatures**

- Always follow the charter requirements for signatures, if provided.
- If your city charter has no signature requirements, the recorder should sign every ordinance after its passage on final reading. The mayor or presiding officer should also sign.

### **K. Publication and public hearing**

- Follow your city's charter requirements if provided.
- If not provided by charter or general law, publication of an ordinance is not required.
- For a list of ordinances requiring notice and public hearing, see Section V in Part 1 of this publication.

## **II. ORDINANCE-WRITING PRIMER**

This short primer is intended as an introduction to clear writing in drafting ordinances. In certain contexts, depending on formality, tradition, subject matter, etc., exceptions to general guidelines may be appropriate.

### **A. Basic concepts**

1. Use language commonly understood by those most likely to be affected by the ordinance. While ordinances may have general application, they often apply to certain similarly situated classes, e.g., owners of dogs and cats.
2. Keep sentences short. It's not that unusual in legal writing to see sentences



of 200 words. When sprinkled with “legalese” these sentences can be difficult to decipher even for those trained in the law.

- 3. Use terms consistently. Don’t call something a “vehicle” in one sentence and a “motorcycle” in another if they are meant to be the same thing. Stick with the more specific term.
- 4. In general, words should be used as they are normally understood. Avoid definitions such as “the word ‘dog,’ as used in this chapter, also means ‘cat.’”
- 5. Divide subjects into sections and subsections. Good organization of ideas provides a logical flow of information that is more easily understood and remembered.
- 6. Write in the active, not the passive, voice. Check the order of the parts of speech within your sentences. The natural order of a sentence—subject, verb, object—is generally mixed up in the passive voice. In the passive voice: “The dog [object] was restrained [verb] by the officer [subject].” In the active voice: “The officer [subject] restrained [verb] the dog [object].” If a “sentence” completely lacks a subject, it’s probably in the passive voice: “The package [object] will be delivered [verb].”

**B. Legalese and equivalents.**

The left-hand column contains several words and phrases seen frequently in ordinances making them difficult to read and understand. The right hand column contains a concise, more easily understood equivalent.

LEGALESE	EQUIVALENT
1. during such time as . . . . .	while
2. due to the fact that . . . . .	because
3. afford the opportunity to . .	allow
4. in order to . . . . .	to
5. in an effort to . . . . .	to
6. in the event that . . . . .	if
7. give guidance to . . . . .	guide
8. at such time as . . . . .	when
9. it has been determined that there is . . . . .	there is
10. it is necessary that the aforesaid municipal code section be amended to . . . .	municipal code section _____ is amended to
11. the person to whom said license was issued . . . . .	the licensee
12. it shall be unlawful to . . . .	it is unlawful to
13. shall be and the same is hereby amended . . . . .	is amended
14. shall be defined as . . . . .	means
15. board of mayor and aldermen, hereinafter referred to as “board” . . . .	board of mayor and aldermen (board)

Certain words usually can be eliminated from an ordinance without changing its meaning: forthwith, henceforth, hereinabove, hereinafter, heretofore, thenceforth, thereupon, therewith, etc.

If you are interested in further study and research on this subject, the following Web site is an excellent resource:  
<http://www.plainlanguagenetwork.org>.



### III. SAMPLE ORDINANCE WITH ELEMENTS LABELED

**Ordinance number (recommended—check charter):** 2003-23

**Caption (recommended—check charter):**

AN ORDINANCE OF THE CITY OF \_\_\_\_\_, TENNESSEE REGULATING THE OWNERSHIP OF VICIOUS DOGS.

**Whereas clauses (optional):**

Whereas, vicious dogs represent a potential danger to citizens and other animals; and

Whereas, ...

**Ordination clause (required—use charter language):**

Be it ordained by the Board of Mayor and Aldermen of the City of \_\_\_\_\_, Tennessee:

**Body of ordinance:**

Section 1. Definitions.

(1) "Owner" means...

(2) "Vicious dog" means...

Section 2. The owner of a vicious dog shall not...

Section 10. Penalty. Violations of this ordinance shall be punishable by...

**Severability clause (optional/recommended, depending on type/length of ordinance):**

Section 11. If any section, phrase, sentence or portion of this ordinance is held invalid or unconstitutional... not affect the validity of remaining portions thereof.

**Date of effect (required—check charter):**

Section 12. This ordinance shall take effect 15 days after its passage, the public welfare requiring it.

**Dates of passage (required—check charter):**

Passed 1<sup>st</sup> reading \_\_\_\_\_

Passed 2<sup>nd</sup> reading \_\_\_\_\_

**Signatures (recommended—check charter):**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Recorder



## IV. AMENDMENTS TO ORDINANCES

The recommendations in this section apply to ordinances in general. For amendments to municipal code sections, see the MTAS publication “Your Municipal Code—Adopting It and Keeping It Up-To-Date.” For amendments to ordinances or municipal codes that adopt building codes by reference, see the MTAS publication “Adopting Building Codes and Building Code Amendments by Reference.”

An amendment to an ordinance must be passed with the same adoption procedures as the original ordinance. You may not amend an ordinance with a resolution or motion. It must be done by ordinance.

Before proposing an amendment to an ordinance, you must find any ordinances that are still in effect on the same subject as the proposed amendment. If an ordinance is not included in your municipal code or if your city has no municipal code, refer specifically by ordinance number and caption to the ordinance or ordinances that are being amended, and refer to the specific section or sections affected by the amendment. Example: “Section 1. Ordinance #1994-14, titled, ‘An ordinance to establish the time and day of regular meetings of the board of mayor and aldermen,’ is amended by changing the language ‘7:30 p.m. the first Tuesday of each month,’ to ‘7:00 p.m. the second Tuesday of each month.’”

Don’t attempt to amend or repeal ordinances by using phrases such as “all provisions in conflict with.” This puts the person who is interpreting the amendment in the position of having to guess what the board intended to amend or repeal and which ordinances or code sections are affected. You must determine which provisions of the old ordinance or ordinances are in conflict with the new provisions and specifically repeal or amend them.

### A. Amending sections of existing ordinances

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

#### EXAMPLE 1

Section 2 of ordinance #1998-02, titled, “An ordinance to establish 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, and the ordinance is not included in a regularly updated municipal code, write out the whole text of the section as amended in the ordinance.

#### EXAMPLE 2

Ordinance #2001-2, titled, “An ordinance to prohibit unauthorized cross-connections, auxiliary intakes, by-passes, and interconnections to the public water supply,” is amended in Section 4, “Statement required,” to read:

Section 4. 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 Environment and Conservation, and the operation and maintenance of same have been placed under the direct supervision of the superintendent of the water works.

Section 14. Volunteer Street. The speed limit on Volunteer Street between Yogi Avenue and Wimpole Place is 35 miles per hour.

## V. ORDINANCE MAINTENANCE

If your city has no municipal code, you must maintain adequate records so that you will be able to locate your ordinances and incorporate the ordinances amending them. You should keep tables of all ordinances with cross references to existing ordinances. References should include the ordinance number, subject, and ordinances amending the ordinance. The tables must be consulted every time a new ordinance is written so that existing ordinances affected by the amendment may be modified to reflect the changes.

In addition, you must keep ordinances covering the same subject together. Ordinances are often amended several times, and it may be difficult to reconcile their provisions with those established by later ordinances. In such cases, a new ordinance should be adopted to replace all of the amendments and the original ordinance. If you have a municipal code and you keep it up to date, this will not be a problem.

MTAS has been producing municipal codes, charters, and updates for Tennessee cities for more than 50 years. If your city has no municipal code, contact us if you would like information about our codification services.

### B. Repealing sections of existing ordinances.

If an ordinance repeals part of an ordinance, it should refer to the specific section or subsections it is repealing.

#### EXAMPLE 1

Ordinance #1955-3, titled, "An ordinance to establish a beer board and provide its powers and duties," is amended by repealing Section 3, "Citizenship."

### C. Replacing sections of existing ordinances.

If an ordinance replaces a section of a previous ordinance, it should refer to the specific section, by number and title, to be replaced.

#### EXAMPLE 1

Ordinance #1974-23, titled, "An ordinance to establish speed limits on certain streets," is amended by replacing Section 14, "Disco Street," with a new Section 14, "Volunteer Street," to read:



### A. SAMPLE ORDINANCE TABLE 1—BY NUMBER

Ordinance #	Date	Subject	Amended by Amends/Replaces	Repealed/ Replaced by
1998-12	5/14/02	Beer permits	Amended by 1999-2, and 2001-16	Replaced by 2003-4
1998-13	5/14/02	Water rates	Amends 1997-9	
1998-14	5/28/02	Zoning in R-1	Amended by 1999-3, 2000-14, and 2002-2	

### B. SAMPLE ORDINANCE TABLE 2—ALPHABETICAL BY SUBJECT

Subject	Ordinance #	Date	Amended by Amends/Replaces	Repealed/ Replaced by
Animal Control	1996-9	12/02/96	Amended by 2002-3	Replaced by 2004-8
Annexation	2002-2	03/30/02	Amends 1997-9	
Beer Board	1993-14	05/22/93	Replaced 1985-3, amended by 2001-3	
Building Code	1978-4	02/04/78	Amended by 1992-4, 1993-3, 1994-9, 1999-2, 2000-4	Replaced by 2003-20



**VI. GENERAL LAW CHARTERS—ADOPTION PROCEDURES AND ORDINANCE FORMS**

The information in this section applies only to cities with either the general law mayor-aldermanic charter,<sup>cxliv</sup> or the general law manager-commission charter.<sup>cxlv</sup> It is included because the two charters apply to more than one-third of the cities in the state.

**A. General law mayor-aldermanic charter**

1. Procedures

T.C.A. § 6-2-101. Publication of ordinances.— Each ordinance, or the caption of each ordinance, shall be published after its final passage in a newspaper of general circulation in the municipality. No ordinance shall take

effect until the ordinance or its caption is published.<sup>cxlvi</sup>

T.C.A. § 6-2-102. Ordinance procedure.—An ordinance shall be considered and adopted on two (2) separate days; any other form of board action shall be considered and adopted on one (1) day. Any form of board action shall be passed by a majority of the members present, if there is a quorum. A quorum is a majority of the members to which the board is entitled. All ayes and nays on all votes on all forms of board action shall be recorded.<sup>cxlvii</sup>

2. Sample ordinance form.

**ORDINANCE NO.** \_\_\_\_\_

An Ordinance to \_\_\_\_\_

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

Section 1.

Section 2.

Section 3. Date of effect. This ordinance shall take effect from and after its final passage, the public welfare requiring it.

Passed 1<sup>st</sup> reading, \_\_\_\_\_, 20\_\_\_\_\_.

Passed 2<sup>nd</sup> reading, \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Recorder



**B. General law manager-commission charter cities**

1. Procedures.

T.C.A. § 6-20-214. Style of ordinances.—All ordinances shall begin, “Be it ordained by the city of (here inserting name) as follows:”<sup>cxlviii</sup>

T.C.A. § 6-20-215. Ordinance procedure.—

(a) Every ordinance shall be read two (2) different days in open session before its adoption, and not less than one (1) week shall elapse between first and second readings, and any ordinance not so read shall be null and void. Any city incorporated under chapters 18-23 of this title may establish by ordinance a procedure to read only the caption of an ordinance, instead of the entire ordinance, on both readings. Copies of such ordinances shall be available during regular business hours at the office of the city recorder and during sessions in which the ordinance has its second reading.

(b) An ordinance shall not take effect until fifteen (15) days after the first passage thereof, except in case of an emergency ordinance. An emergency ordinance may become effective upon the day of its final passage, provided it shall contain the statement that an emergency exists and shall specify with distinctness the facts and reasons constituting such an emergency.

(c) The unanimous vote of all members of the board present shall be required to pass an emergency ordinance.

(d) No ordinance making a grant, renewal, or extension of a franchise or other special privilege, or regulating the rate to be charged for its service by any public utility shall ever be passed as an emergency ordinance. No ordinance shall be amended except by a new ordinance.<sup>cxlix</sup>

T.C.A. § 6-20-218. Publication of penal ordinances—Effective date.—

(a) Each ordinance of a penal nature, or the caption of each ordinance of a penal nature, shall be published after its final passage in a newspaper of general circulation in the city.

(b) No such ordinance shall take effect until the ordinance, or its caption, is published except as otherwise provided in chapter 54 part 5 of this title.<sup>cl</sup>

2. Sample ordinance form

**ORDINANCE NO.**

An ordinance to \_\_\_\_\_

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF \_\_\_\_\_, TENNESSEE, AS FOLLOWS:

Section 1.

Section 2.

Section 3. This ordinance shall take effect no sooner than fifteen (15) days after first passage thereof, provided that it is read two (2) different days in open session before its adoption, and not less than one week elapses between first and second readings, the welfare of the town requiring it.

Passed on 1<sup>st</sup> reading: \_\_\_\_\_, 2002.

Passed on 2<sup>nd</sup> reading: \_\_\_\_\_, 2002.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Recorder



## VII. FOOTNOTES

- i. *Rutherford v. Swink*, 96 Tenn. 565, 568, 16 S.W. 76 (1891).
- ii. *Brinkley v. State*, 108 Tenn. 475, 481 (1901).
- iii. *Lewis v. Bowman*, 814 S.W.2d 369, 373,374 (Tenn. Ct. App. 1991) (quoting *McQuillin Mun. Corp.* § 15.19 (3d ed. 1989).
- iv. *City of Lebanon v. Baird*, 756 S.W.2d 236, 242 (Tenn. 1988).
  - v. T.C.A. § 6-1-101, *et seq.*
  - vi. T.C.A. § 6-19-101, *et seq.*
  - vii. T.C.A. § 6-30-101, *et seq.*
  - viii. T.C.A. § 7-1-101, *et seq.*
  - ix. Tenn. Const. art. XI, § 9.
    - x. T.C.A. § 8-3-202.
  - xi. E.g., *City of Luttrell Charter*, art. V, § 4, Tenn. Const. art XI, 9.
  - xii. E.g., *City of Luttrell Charter*, art. V, § 4, Tenn. Priv. Acts 1965, ch. 94.
- xiii. *Long v. Taxing District*, 75 Tenn. (7 Lea) 134 (1881).
- xiv. *McQuillin Mun. Corp.* § 16.11 (1996).
- xv. T.C.A. § 6-54-510.
- xvi. *Balsinger v. Town of Madisonville*, 435 S.W.2d 803, 805 (Tenn. 1968).
- xvii. *Rutherford v. City of Nashville*, 79 S.W.2d 581, 584 (Tenn. 1935).
- xviii. *Metropolitan Government of Nashville and Davidson County v. Mitchell*, 539 S.W.2d 20 (Tenn. 1976).
  - xix. *Balsinger*, 435 S.W.2d at 805.
  - xx. Tenn. Priv. Acts 1994, ch. 177.
  - xxi. *City of Luttrell Charter*, Art. V, § 4, Tenn. Priv. Acts 1951, ch. 306.
- xxii. *Calloway v. Lenoir City*, 3 Tenn. C.C.A. 658, 3 Higgins 658 (Tenn. Civ. App. 1913).
- xxiii. Tenn. Priv. Acts 2001, ch. 17.
- xxiv. *Texas Co. v. Fort*, 168 Tenn. 679, 683. (1935).
  - xxv. *Id.*
  - xxvi. *Brown v. State ex rel. Jubilee Shops, Inc.*, 221 Tenn. 283, 426 S.W.2d 192, 195 (1968).
  - xxvii. *Id.*
  - xxviii. *Id.*
  - xxix. *McQuillin Mun. Corp.* § 16.19 (1996).
  - xxx. *City of Kingsport v. Jones*, 268 S.W.2d 576 (Tenn. 1954).
  - xxxi. *Id.*
  - xxxii. *Memphis St. R. Co. v. Byrne*, 119 Tenn. 278, 104 S.W. 460 (1907)
  - xxxiii. *Kingsport v. Jones* at 578.
  - xxxiv. *Id.*
  - xxxv. *Madison v. City of Maryville*, 173 Tenn. 489, 121 S.W.2d 540 (1938).
  - xxxvi. Tenn. Priv. Acts 1945, ch. 84, as replaced by Tenn. Priv. Acts 1949, ch. 811, § 1(k), and amended by Tenn. Priv. Acts 1977, ch. 150, § 4.
  - xxxvii. T.C.A. § 6-20-215(a).
  - xxxviii. T.C.A. § 6-2-101 (each “ordinance, or the caption of each ordinance, shall be published after its final passage in a newspaper of general circulation in the municipality.”)
  - xxxix. *Patterson v. Town of Tracy City*, 183 Tenn. 160, 191 S.W.2d 432, 434 (1946).
    - xl. *McQuillin Mun. Corp.* § 16.26 (1996).
    - xli. *Jones*, 268 S.W.2d at 578.
    - xl.ii. *McQuillin Mun. Corp.* § 16.26 (1996).
    - xl.iii. *Harrell v. Hamblen County Quarterly Court*, 526 S.W2d 505 (Tenn. App. 1975).
    - xl. iv. Tenn. Priv. Acts 1992, Chapter 243.
    - xl. v. Tenn. Priv. Acts 1931, ch. 615.
    - xl. vi. *State ex rel. Wilson v. City of LaFayette*, 572 S.W.2d 922, 924 (Tenn. 1978).
    - xl. vii. *Metro. Gov’t of Nashville, etc. v. Mitchell*, 539 S.W.2d 20 (Tenn. 1976).



- xlvi. McQuillin Mun. Corp. § 16.27 (1996) (citing authority from other jurisdictions holding for and against invalidating an ordinance based on an inaccurate ordination clause).
- xlix. Id.
- l. Jones v. Nashville, 109 Tenn. 550 (1902).
- li. Id. 109 Tenn. at 557, 558.
- lii. Id. at 558.
- liii. Jonesboro v. Kincheloe, 148 Tenn. 688, 693, 257 S.W. 418 (1923).
- liv. City of Clarksville v. Moore, 688 S.W.2d 428, 429 (Tenn. 1985).
- lv. Kincheloe, 148 Tenn. at 692.
- lvi. Id.
- lvii. Howard v. Christmas, 176 S.W.2d 821, 822 (Tenn. 1944).
- lviii. Staub v. City of Knoxville, 33 S.W.2d 415, 161 Tenn. 663 (1930).
- lix. Nashville, C. & St. L. Ry. v. White, 15 S.W.2d 1, 158 Tenn. 407 (1928).
- lx. Deja Vu of Nashville, Inc. v. Metropolitan Government of Nashville and Davidson County, Tennessee, 274 F.3d 377 (6th Cir. 2001).
- lxi. Ellwest Stereo Theater, Inc. v. Boner, 718 F.Supp. 1553 (M.D. Tenn. 1989).
- lxii. See Deja Vu of Cincinnati, L.L.C. v. Union Township Board of Trustees, 326 F.3d 791 (6th Cir. 2003)(failure to provide for prompt judicial review of adverse licensing decisions was essential to enforcement of entire sexually oriented businesses ordinance and was not severable).
- lxiii. Tenn. Priv. Acts 1919, ch. 48, as amended by Tenn. Priv. Acts 1949, ch. 206, § 1.
- lxiv. Tenn. Priv. Acts 1917, ch. 76.
- lxv. Tenn. Priv. Acts, 2001, ch. 38, § 1.
- lxvi. Tenn. Priv. Acts 1997, ch. 48, § 26.
- lxvii. Tenn. Priv. Acts 1996, ch. 207.
- lxviii. Tenn. Priv. Acts 1992, ch. 210.
- lxix. See McQuillin Mun. Corp. § 15.39.
- lxx. See, e.g., T.C.A. § 6-51 102(a)(1)(annexation “ordinance shall not become operative until thirty (30) days after final passage thereof”).
- lxxi. See Walldorf v. City of Chattanooga, 237 S.W.2d 939 (Tenn. 1951)(general state law has priority over charter provision).
- lxxii. Jefferson County v. City of Morristown, 1999 WL 817519, unpublished opinion at 8 (Tenn. Ct. App. 1999).
- lxxiii. City of Bluff City v. Morrell, 764 S.W.2d 200, 202 (Tenn. 1988).
- lxxiv. State Ex Rel. Balsinger v. Town of Madisonville, 435 S.W.2d 803, 805 (Tenn. 1968)(“Where the law is silent as to the mode of procedure, no particular formality in the enactment of an ordinance need be adopted,” quoting McQuillin Mun. Corp. § 16.10 at 174.)
- lxxv. See, e.g., City of Niota Charter, § 8. Tenn. Priv. Acts 1919, ch. 48.
- lxxvi. Town of Silerton Charter, § 16, Tenn. Priv. Acts 1982, ch. 210, § 11.
- lxxvii. Town of Toone Charter, § 11, Tenn. Priv. Acts 1903, ch. 414.
- lxxviii. 229 city charters require two readings. Fifty-one have no requirement. Only 67 charters require either one or three readings.
- lxxix. City of LaFollette Charter, Art. IV, § 10, Tenn. Priv. Acts 2003, ch. 46.
- lxxx. See, e.g., Jonesborough Charter, § 15a, Tenn. Priv. Acts 1997, ch. 30, § 2 (“As used in this section, ‘read’ means the reading of the caption of the ordinance”).
- lxxxii. City of Moscow Charter, § 13, Tenn. Priv. Acts 1991, ch. 77.
- lxxxiii. E.g., City of Crossville Charter, Article VI, Section 2, Tenn. Priv. Acts 1953, ch. 519 (“An ordinance shall not take effect until fifteen days after the first passage thereof...”).



- lxxxiii. Hourglass Lounge, Inc. v. City of Johnson City, 879 S.W.2d 860, 861 (Tenn. Ct. App. 1994).
- lxxxiv. 539 S.W.2d 20, 22 (Tenn. 1976).
- lxxxv. Id.
- lxxxvi. Id. at 21.
- lxxxvii. Id. at 22.
- lxxxviii. Hourglass Lounge, 879 S.W.2d 860.
- lxxxix. Hourglass Lounge at 862.
- xc. Id.
- xc. Id.
- xcii. See, e.g., Town of Normandy Charter, § 4(a)(2), Tenn. Priv. Acts 2002, ch. 151; see also City of Jefferson City Charter Article IV, § 12, Tenn. Priv. Acts 1979, ch. 11. Both charters provide that, “...no material or substantial amendment may be made on final passage, unless such amendment be passed in the same manner as an amendment to an existing ordinance.”
- xciii. City of Huntingdon Charter, § 2.08(a), Tenn. Priv. Acts 1974, ch. 233.
- xciv. City of Manchester Charter, § 6, Tenn. Priv. Acts 1959, ch. 273, § 5 (“...amendments which do not materially change the ordinance may be made at any time before final passage, and amendments which materially change the ordinance as introduced shall not be made except by vote of five of the Aldermen...”).
- xcv. City of Gatlinburg Charter, § 6, Tenn. Priv. Acts 1977, ch. 150, § 4 (“...if any ordinance is amended on the second reading, a third reading of that ordinance shall be required”).
- xcvi. See, e.g., Town of Centertown Charter, § 12, Tenn. Priv. Acts 1951, ch. 606 (“...when passed [ordinances] shall be signed by the Mayor”).
- xcvii. McQuillin Mun. Corp. § 16.37.
- xcviii. E.g., Town of Hornsby Charter, § 17, Tenn. Priv. Acts 1920 (E.S.), ch. 112 (“...no ordinance so vetoed shall go into effect unless and until it again passes by a majority of the Board”).
- xcix. City of Dresden Charter, § 12, Tenn. Priv. Acts 1986, Chapter 146 (“The Mayor shall affix his approval or disapproval within five days after adoption by the board. If the Mayor withholds his signature for five days, exclusive of Sundays and holidays, the ordinance shall become effective for failure to veto”).
- c. E.g., Town of Gibson Charter, § 12, Tenn. Priv. Acts 1992, ch. 243 (providing that ordinances “shall be signed by the mayor before they shall become effective”).
- ci. McQuillin Mun. Corp. § 16.36.
- cii. McQuillin Mun. Corp. § 16.38.
- ciii. See McQuillin Mun. Corp. § 16.37.
- civ. Memphis Street Ry. Co. v. Rapid Transit Co. Et Al, 198 S.W. 890, 138 Tenn. 594 (1917).
- cv. Id. at 608.
- cvi. Id. at 609.
- cvi. Id.
- cviii. Memphis Street Ry. Co. at 612.
- cix. Brimer v. Municipality of Jefferson City, 187 Tenn. 467 (1948), Rutherford v. Swink, 90 Tenn. 150 (1891).
- cx. Adams v. Dean Roofing Company, Inc., 715 S.W.2d 341, 342 (Tenn. Ct. App. 1986).
- cx. Tenn. R. Evid. 902(4).
- cxii. City of Jackson v. Hoyel, 465 S.W.2d 736, 741 (Tenn. 1970).
- cxiii. Sweetwater Valley Memorial Park, Inc. v. City of Sweetwater, 372 S.W.2d 168, 169 (Tenn. 1963).
- cxiv. 00 Op. Att’y Gen. 090 (2000).
- cxv. Id. at 2, 3.
- cxvi. 866 S.W.2d 553, 555, 557 (Tenn. Ct. App. 1993).



- cxvii. Id. at 555.
- cxviii. Id.
- cxix. Id.
- cxx. 11 S.W.3d 126 (Tenn. Ct. App. 1999).
- cxxi. Id. at 134.
- cxxii. Id.
- cxxiii. E.g., City of Adamsville Charter, § 2.11, Tenn. Priv. Acts 1987, ch. 42 (caption of each ordinance must be published in the officially designated newspaper at least once prior to final reading).
- cxxiv. Town of Chapel Hill Charter, § 15, Tenn. Priv. Acts 2002, ch. 159.
- cxxv. City of Ardmore Charter, Art. XII, § 4, Tenn. Priv. Acts 1949, ch. 801 (board may require by resolution that any ordinance be published prior to its final adoption).
- cxxvi. City of Ridgeside Charter, Section 12, Tenn. Priv. Acts 1931, ch. 615 (“Nor shall any ordinance granting a franchise be valid unless published in full at least five (5) days before final passage...”).
- cxxvii. E.g., City of Alcoa Charter, Article 4, § 5, Tenn. Priv. Acts 1919, ch. 510 (after passage, penal ordinances shall be “published at least once in the official newspaper of the city or county” and shall not be in force until published).
- cxviii. E.g., Town Huntingdon Charter, Section 2.08(d). Tenn. Priv. Acts 1974, ch. 233.
- cxix. 1955 Tenn. Pub. Acts, ch. 113, § 2; 1961 Tenn. Pub. Acts, ch. 320, § 1; 1969 Tenn. Pub. Acts, ch. 136, § 1; 1971 Tenn. Pub. Acts, ch. 420, §§ 1,2,3; 1972 Tenn. Pub. Acts, ch. 844, § 1; 1974 Tenn. Pub. Acts, ch.753, §§ 1,2,8,9; T.C.A. § 6-309; 1980 Tenn. Pub. Acts, ch. 849, § 1; 1981 Tenn. Pub. Acts, ch. 522, §§ 1,2; 1982 Tenn. Pub. Acts, ch. 867, § 1; 1986 Tenn. Pub. Acts, ch. 734, § 1; 1987 Tenn. Pub. Acts, ch. 87, § 1; 1988 Tenn. Pub. Acts, ch.787, § 1; 1998 Tenn. Pub. Acts, ch. 1101, §§ 19,20; 2003 Tenn. Pub. Acts, ch. 90, § 2; 2003 Tenn. Pub. Acts, ch. 225, § 1; 2005 Tenn. Pub. Acts, ch. 411, §§ 1,2,7.
- cxxx. 1875 Tenn. Pub. Acts, ch. 92, § 15; Shan. § 1911; mod. Code 1932, § 3322; 1955 Tenn. Pub. Acts, ch. 113, § 10; 1979 Tenn. Pub. Acts, ch. 363, § 1; T.C.A. (orig. ed.), § 6-304; 1984 Tenn. Priv. Acts, ch. 731, § 1.
- cxxxi. 1955 Tenn. Pub. Acts, ch. 274, § 1; T.C.A. § 6-629; 1981 Tenn. Pub. Acts, ch. 194, § 2.
- cxxxii. 1982 Tenn. Pub. Acts, ch. 626, § 1; 1991 Tenn. Pub. Acts, ch. 484, § 11; 1993 Tenn. Pub. Acts, ch. 448, § 5.
- cxxxiii. 1913 Tenn. Pub. Acts, (1st E.S.), ch. 18, § 2; Shan., §§ 1991a5, 1991a6; 1921 Tenn. Priv. Acts, ch. 526, § 1; mod. 1932 Code, §§ 3412, 3413; T.C.A. (orig. ed.), § 6-1105.
- cxxxiv. 1971 Tenn. Pub. Acts, ch 268, §§ 6, 8, 9, 10, 11, 12; 2003 Tenn. Pub. Acts, ch. 196, § 2; T.C.A. §§ 6-3906, 6-3912.
- cxxxv. 1971 Tenn. Pub. Acts, ch. 268, § 23; T.C.A. § 6-3923.
- cxxxvi. 1990 Tenn. Pub. Acts, ch. 808, § 4.
- cxxxvii. 1935 Tenn. Pub. Acts, ch. 44, § 3; C. Supp. 1950, § 3407.3; T.C.A. (orig. ed.), § 13-703; 1984 Tenn. Pub. Acts, ch. 811, § 3.
- cxxxviii. 1959 Tenn. Pub. Acts, ch. 217, § 2; impl. Am. 1978 Tenn. Pub. Acts, ch. 934, §§ 16, 36; T.C.A. § 13-712.
- cxxxix. 1957, Tenn. Pub. Acts, 376, § 3; T.C.A., § 42-604; 1991 Tenn. Pub. Acts, ch. 486, § 1.



- cxl. 1945 Tenn. Pub. Acts, ch. 74, § 6; C. Supp. 1950, § 2726.25 (Williams, § 2726.52; impl. am. 1972 Tenn. Pub. Acts, ch. 542, § 15; T.C.A. (Orig. Ed.), § 42-406.
- cxli. 1965 Tenn. Pub. Acts, ch. 251, § 5; T.C.A., §§ 54-2205, 54-19-105.
- cxlii. 1965 Tenn. Pub. Acts, ch. 251, § 6; T.C.A., §§ 54-2206, 54-19-106.
- cxliii. 1979 Tenn. Pub. Acts, ch. 253, § 2; T.C.A., § 67-1017.
- cxliv. T.C.A. § 6-1-101, et seq.
- cxlv. T.C.A. § 6-18-101, et seq.
- cxlvi. 1991 Tenn. Pub. Acts, ch. 154, § 1.
- cxlvii. 1991 Tenn. Pub. Acts, ch. 154, § 1; 1998 Tenn. Pub. Acts, ch. 621, § 1.
- cxlviii. 1921 Tenn. Pub. Acts, ch. 173, art. 5, § 1; Shan. Supp., § 1997a149; Code 1932, § 3546; T.C.A. (orig. ed.), § 6-2025.
- cxlix. 1921 Tenn. Pub. Acts, ch. 173, art. 5, § 2; Shan. Supp., § 1997a150; Code 1932, § 3547; 1976 Tenn. Pub. Acts, ch. 420, § 1; T.C.A. (orig. ed.), § 6-2026; 1989 Tenn. Pub. Acts, ch. 175, § 9; 1995 Tenn. Pub. Acts, ch. 13, § 10; 1996 Tenn. Pub. Acts, ch. 652, § 4.
- cl. 1921 Tenn. Pub. Acts, ch. 173, art. 5, § 5; Shan. Supp., § 1997a153; Code 1932, § 3550; T.C.A. (orig. ed.), § 6-2029; 1981 Tenn. Pub. Acts, ch. 194, § 1; 1984 Tenn. Pub. Acts, ch. 811, § 2.; 1989 Tenn. Pub. Acts, ch. 175, § 16.





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# THE UNIVERSITY *of* TENNESSEE

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