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Your Municipal Code: Adopting It and Keeping It Up-to-Date

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YOUR MUNICIPAL CODE: Adopting It and Keeping It Up-to-Date

by Steve Lobertini, Codification Consultant

September 2008

THE UNIVERSITY of TENNESSEE

MUNICIPAL TECHNICAL ADVISORY SERVICE

In cooperation with the Tennessee Municipal League

Your Municipal Code: Adopting It and Keeping It Up-to-Date

by Steve Lobertini, Codification Consultant

September 2008

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The Municipal Technical Advisory Service (MTAS) was created in 1949 by the state legislature to enhance the quality of government in Tennessee municipalities. An agency of the University of Tennessee Institute for Public Service, MTAS works in cooperation with the Tennessee Municipal League and affiliated organizations to assist municipal officials.

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.

MTAS offers assistance in areas such as accounting and finance, administration and personnel, fire, public works, law, ordinance codification, and water and wastewater management. MTAS houses a comprehensive library and publishes scores of documents annually.

MTAS provides one copy of our publications free of charge to each Tennessee municipality, county and department of state and federal government. There is a $10 charge for additional copies of "Your Municipal Code: Adopting It and Keeping It Up-to-Date."

Photocopying of this publication in small quantities for educational purposes is encouraged. For permission to copy and distribute large quantities, please contact the MTAS Knoxville office at (865) 974-0411.

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Your Municipal Code: Adopting It and Keeping It Up-to-Date

CODE ADOPTION PROCEDURES REQUIRED BY STATE LAW

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

ADOPTION OF STANDARD CODES BY REFERENCE

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

NOTICE PRIOR TO ADOPTION OF MUNICIPAL CODE

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

A notice in substantially the following form should suffice:

Public Hearing on Proposed Code of Ordinances

Notice is hereby given that a public hearing on the adoption of a municipal code of ordinances will be held by the town council of the town of _____, Tennessee, at ____ p.m. on the _____ day of _____, 20___, in the town hall. A copy of the proposed code of ordinances is available in the recorder's office for anyone who desires to examine it in advance of the hearing.

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

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

NOTICE AFTER ADOPTION OF MUNICIPAL CODE

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

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

Municipal Code of Ordinances Adopted

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

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

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

OTHER CODE ADOPTION REQUIREMENTS

CODE ADOPTING ORDINANCE

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

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

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

CODE UPDATES

Once your code is adopted, MTAS will update it if you send us the ordinances you want to put in the code. We recommend that you update your code once per year. The first update should be scheduled one year after final reading on your code-adopting ordinance.

FEES

You will be charged a fee based on the MTAS code service charges in effect at the time of the update. The update fee includes 10 copies of the updated pages. Additional copies will be invoiced separately based on our actual costs for duplication, dividers, binders, and shipping.

Update charges vary according to population and are based on a flat fee plus a charge for each modified page. Modifications to the city charter are not subject to the per page charge. The following charges went into effect in July 2008:

POPULATION	COMPLETE CODE	ANNUAL UPDATE
0 - 1,000	$ 2,970	$ 247.50 + $15 per page
1,001 - 2,000	$ 3,340	$ 275 + $15 per page
2,001 - 3,000	$ 3,970	$ 325 + $16 per page
3,001 - 4,000	$ 4,370	$ 355 + $16 per page
4,001 - 5,000	$ 4,770	$ 383 + $16 per page
5,001 - 6,000	$ 5,165	$ 412 + $16 per page
6,001 - 7,000	$ 5,564	$ 442 + $16 per page
7,001 - 8,000	$ 5,960	$ 470 + $16 per page
8,001 - 9,000	$ 6,712	$ 530 + $17 per page
9,001 - 10,000	$ 7,130	$ 560 + $17 per page
10,001 - 11,000	$ 7,550	$ 590 + $17 per page
11,001 - 12,000	$ 7,966	$ 622 + $17 per page
12,001 - 13,000	$ 8,390	$ 653 + $17 per page
13,001 - 14,000	$ 8,815	$ 685 + $17 per page
14,001 - 15,000	$ 9,232	$ 715 + $17 per page
15,001 - 16,000	$10,250	$ 792 + $18 per page
16,001 - 17,000	$10,700	$ 825 + $18 per page
17,001 - 18,000	$11,140	$ 860 + $18 per page
18,001 - 19,000	$11,580	$ 890 + $18 per page
19,001 - 20,000	$12,000	$ 930 + $18 per page
20,001 - 25,000	$12,500	$ 960 + $18 per page
25,001 - 30,000	$12,910	$ 990 + $18 per page
30,001 - 35,000	$13,370	$1,020 + $18 per page
35,001 - 40,000	$13,800	$1,020 + $18 per page
40,001 and over	$14,280	$1,020 + $18 per page

These fees are subject to change, so please check with us for current rates.

ORDINANCE DRAFTING

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

GENERAL CONSIDERATIONS

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

AMENDING EXISTING CODE SECTIONS

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

EXAMPLE 1:

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

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

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

EXAMPLE 2:

In § 10-203(3), Running at large prohibited, the word "animal" is changed to "dog" throughout the subsection.

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

EXAMPLE 3:

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

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

REPEALING EXISTING CODE SECTIONS

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

EXAMPLE 4:

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

REPLACING EXISTING CODE SECTIONS

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

EXAMPLE 5:

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

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

ADDING NEW SECTIONS TO THE CODE

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

EXAMPLE 6:

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

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

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

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

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

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

EXAMPLE 7:

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

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

AMENDMENTS TO BUILDING CODES ADOPTED BY REFERENCE

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

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

EXAMPLE 8:

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

ORDINANCE NUMBERING

GENERAL CONSIDERATIONS

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

THE UNIVERSITY of TENNESSEE

MUNICIPAL TECHNICAL ADVISORY SERVICE

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Inquiries and charges of violation concerning Title VI, Title IX, Section 504, ADA or the Age Discrimination in Employment Act (ADEA) or any of the other above referenced policies should be directed to the Office of Equity and Diversity (OED), 1840 Melrose Avenue, Knoxville, TN 37996-3560, telephone (865) 974-2498 (V/TTY available) or 974-2440. Requests for accommodation of a disability should be directed to the ADA Coordinator at the UTK Office of Human Resources, 600 Henley Street, Knoxville, TN 37996-4125.

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