THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE
...in cooperation with the Tennessee Municipal League

#207
HOT topic

February 8, 2011

LEGISLATURE DECLARES WHEN ORDINANCES, RESOLUTIONS TO BE USED

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

- A tax levy;
- A special assessment;
- Anything of a permanent nature, i.e., a measure applying to present and future conduct;
- A regulatory or penal measure, i.e., a measure controlling conduct or levying a fine or penalty; and
- Any action required by the general law or the municipality's charter to be done by ordinance.

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

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

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

On the other hand, a municipal charter provision would not override this new general law requirement for using ordinances. Many municipal charters, for example, include special assessments in a general

powers provision that allows the special assessment to be made by resolution or ordinance. Under this new law, the resolution option is foreclosed, and the municipality must use an ordinance to make a special assessment.

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

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MTAS1550 • E14-1050-000-035-11