MUNICIPAL HANDBOOK

Dennis Huffer, Legal Consultant
Published August, 2009; updated through July, 2008

THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE

In cooperation with the Tennessee Municipal League



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Acknowledgment

A great debt is owed to Dr. Victor Hobday who originated this publication.

Many people are responsible for the content of the Municipal Handbook. In recent years Legal Consultant Dennis Huffer has been charged with updating the handbook and he benefitted from the assistance of many MTAS consultants, including Legal Consultants Sid Hemsley, Melissa Ashburn, and Josh Jones; former Legal Consultant Steve Lobertini; Municipal Management Consultant Margaret Norris; and Executive Director M. Michael Tallent.

Huffer's partner in this effort is Administrative Specialist Armintha Loveday.

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Warning

Courts have not ruled on the validity of many of the statutes cited in this publication. Therefore, there is a possibility that, if tested in court, some of the statutes cited could be ruled unconstitutional or otherwise invalid.

Chapter One

State Constitutional Provisions

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

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

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

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

Forms of Government and Governing Bodies

Home Rule

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

If a city chooses home rule, it relinquishes the opportunity to have the legislature pass private acts for it. Instead, residents must approve by local referendum any changes to the home rule charter. (See Victor C. Hobday, *An Analysis of the 1953 Tennessee Home Rule Amendments*, Bureau of Public Administration and MTAS, The University of Tennessee, Knoxville; Second Edition, May 1976, pp. 5-9.) In addition, T.C.A. § 6-53-105 (c) requires that the municipal chief financial officer estimate the cost and revenue impact of home rule amendments and that such estimates appear on ballots containing amendments to home rule charters.

Consolidation of City and County Functions

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

Annexation, Merger, or Creation of Cities

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

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

Financial Provisions in the Tennessee Constitution

Municipal revenues and fiscal administration are covered at length in Chapters 7 and 9 of this handbook. Major financial provisions in the state constitution that affect cities are, in summary:

- "No public money shall be expended except pursuant to appropriations made by law" (Article II, Section 24). This all-encompassing language means that even the profit from a snack machine in the city hall's basement must be appropriated by the city council before it can be spent;
- Article II, Section 28, contains provisions for exempting public, religious, charitable, scientific, literary, and educational property from property taxes and establishing assessment ratios for classifications of real property;
- "The credit of no county, city, or town shall be given or loaned ... nor shall any county, city, or town become a stockholder with others in any company, association, or corporation..." unless the arrangement is approved by a three-fourths majority of the vote in a referendum (Article II, Section 29). Because of this restriction, some public/private partnership arrangements that other states are trying would require referendum approval in Tennessee. This provision has been strictly interpreted to prohibit municipalities from waiving property taxes or providing similar economic incentives to attract new industries. However, industrial development corporations formed by municipalities may own buildings and property. As governmental entities, they are exempted from taxation and may pass this along to the lessees of such properties;
- Article XI, Section 8, prohibits private acts that "... suspend any general law for the benefit of any particular individual ... [or] grant to any individual or individuals rights, privileges, immunities, or exemptions other than such as may be by the same law extended to any member of the community";
- Local officials frequently are frustrated when the state mandates an action or service for which their municipalities do not have funds. Theoretically, the Tennessee Constitution gives local governments some protection against mandates. It says, "No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost" (Article II, Section 24). It has been held that "The legislature is empowered to elect what the share shall be in the subject expenses" (See *Morie v. Snodgrass*, 886 S.W.2d 761 (Tenn. Ct. App. 1994)).

Dual Officeholding

The Tennessee Constitution (Article II, Section 26) prohibits "any person in this state" from holding "more than one lucrative office at the same time." The Tennessee courts have held that this prohibition applies only to holding two *state* offices, not to holding a state office and a local government office or two local government offices (see *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (1931)). For that reason, a municipal officer may serve in the General Assembly or another local government seat unless otherwise prohibited by law. Some municipal charters forbid dual officeholding of various kinds. Such charter provisions generally have been upheld.

Chapter Two

Elections

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

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

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

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

Municipal Elections

Dates; Changes

In election law, there is no uniform date for municipal elections as there is for county elections. Private act charters prescribe election dates, and a private act municipality may change its election date by changing its charter. The general law mayor-aldermanic charter provides that the first election after the incorporation of the municipality shall be held not later than 62 days following the incorporation election, and it authorizes the board of mayor and aldermen to change its election date by ordinance (T.C.A. § 6-1-207, T.C.A. § 6-3-104).

The general law city manager-commission charter provides that the first election of commissioners shall be the fourth Tuesday following the incorporation election, and it authorizes the board of commissioners to change the election date by ordinance, including changing to the date of the general state election, within certain limitations outlined in the charter (T.C.A. § 6-20-102).

The general law modified city manager-council charter provides that the first election of council members after the incorporation of the municipality shall be the fourth Tuesday following the incorporation election, and it authorizes the city council to change the election date by ordinance (T.C.A. § 6-31-102).

Qualifying Deadline for Municipal Election

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

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

Early Voting

"Early voting" applies to all elections, including municipal elections (T.C.A. §§ 2-6-101, *et seq.*). The time and the place for early voting is not more than 20 days nor fewer than five days before the date of the election, at the office of the county election commission. However, in the case of a municipal election in which there is no opposition for any of the offices involved, the period is not more than 10 or fewer than five days before the election.

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

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

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

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

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

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

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

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

Breaking Tie Votes in Municipal Elections
The municipality's governing body may either break a tie or call for a runoff election (T.C.A. § 2-8-111(2)).

Elections Generally Nonpartisan
A municipal election is nonpartisan unless a partisan election is provided for by municipal charter (T.C.A. § 2-13-208).

Nonresident Property Owners' Voting Rights
Tennessee statutes recognize nonresident property owners' voting rights in municipal elections if such rights are provided by municipal charter or general law. Separate voter registration for nonresident property owners is required. Therefore, nonresident property owners who also are registered to vote anywhere in Tennessee must register as property rights voters before registration closes for an upcoming municipal election, just as other voters must register (T.C.A. § 2-2-107, T.C.A. § 6-53-102).

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

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

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

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

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

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

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

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

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

Disqualification For Infamous Crime In Office
A person convicted of a felony while holding office that involves the duties of the office is disqualified forever from holding any state or local office (T.C.A. § 40-20-114).

Political Ads

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

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

Referenda Elections

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

Local Referenda Permitted

The following referenda are authorized under Tennessee law:

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

Referendum Election Procedures

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

Resolutions, ordinances, or petitions requiring elections on questions to be held during the general election or the presidential primary must be filed with the county election commission at least 60 days before the election (T.C.A. § 2-3-204(b)).

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

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

Financial Disclosure/Conflict of Interest Disclosure

All candidates for the chief administrative office (mayor), any candidates who spend more than $500, and candidates for other offices that pay at least $100 a month are required to file campaign financial disclosure reports. Civil penalties of $25 per day are authorized for late filings. Penalties up to the greater of $10,000 or 15 percent of the amount in controversy may be levied for filings more than 35 days late. It is a Class E felony for a multicandidate political campaign committee with a prior assessment record to

intentionally fail to file a required campaign financial report. Further, the treasurer of such a committee may be personally liable for any penalty levied by the Registry of Election Finance (T.C.A. §§ 2-10-101–118).

Contributions to political campaigns for municipal candidates are limited to:

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

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

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

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

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

Recall Elections

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

Petitions for Recall, Referendum, or Initiative

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

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

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

Chapter Three

Forms of Government and Governing Bodies

This chapter deals with provisions not covered elsewhere that are of general application to municipal governments, governing bodies, and their members.

Types of Municipal Charters

Tennessee has three categories of municipal charter:

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

(For a complete discussion of the adoption and amendment of the various types of charters, see *Getting to Know and Maybe Love Your Municipal Charter* by Sidney D. Hemsley, The University of Tennessee Municipal Technical Advisory Service, Knoxville, July 2008.)

The governing body of a private act city can play a major role in determining the municipal government's form and structure. Its members can influence the legislature to make private act amendments, which may then be approved by a two-thirds vote of the governing body or by referendum. In a home rule city, charter amendments may be initiated by the governing body passing an ordinance, which is then submitted for referendum approval.

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

General Law Charters

The Tennessee code provides three general law charters:

- Mayor-aldermanic charter (T.C.A. §§ 6-1-101, *et seq.*);
- City manager-commission charter (T.C.A. §§ 6-18-101, *et seq.*); and
- Modified city manager-council charter (T.C.A. §§ 6-30-101, *et seq.*)

The following section summarizes the features of the three general law charters.

Two statutory schemes (T.C.A. §§ 7-1-101, *et seq.* and 7-21-101, *et seq*.) outline the requirements for metropolitan government charters, which must be proposed by a charter commission and approved by referendum.

General Law Mayor-Aldermanic Charter

The mayor-aldermanic general law charter provides for a board of mayor and aldermen consisting of the mayor and two to eight aldermen. Newly incorporated cities must have at least one ward, and two aldermen must be elected from that ward. Newly incorporated cities with more than 5,000 people must have at least two wards, and two aldermen must be elected from each ward.

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

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

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

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

General Law City Manager-Commission Charter
The city manager-commission charter provides for a council-manager government similar to the model city government charter recommended by the National Civic League.

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

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

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

Modified City Manager-Council Charter
The city manager-council charter leaves fewer options in structuring local government than the other two forms.

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

The council appoints the city attorney and a city manager. The city judge is elected to a four-year term or an eight-year term if exercising concurrent jurisdiction with general sessions court. (See Chapter 6, "City Courts.") All other department heads are appointed by the city manager. The manager serves at the pleasure of the city council. He or she is responsible for purchasing, financial affairs, administration, presenting a proposed budget to the council, and seeing that all city laws and ordinances are enforced. Councilmembers are prohibited from giving orders to the manager's subordinates. Except for inquiries, they are to deal with administrative officers and city employees solely through the manager.

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

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

Incorporating New Cities

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

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

T.C.A. § 6-58-101 provides that no new municipality may be incorporated unless it is within a planned growth area. (See Chapter 23, "Countywide Growth Plan, Annexation and Boundary Adjustments, and Dissolution.") The county legislative body must approve the incorporation prior to the incorporation election. The new municipality must levy a property tax at least equal to its portion of state-shared revenue. For 15 years following its incorporation, the newly incorporated city must give the county the same amount of local option sales tax and wholesale beer tax the county was collecting on the date of incorporation (T.C.A. § 57-6-103, T.C.A. § 67-6-712).

T.C.A. § 9-4-5306 and T.C.A. § 67-5-104 establish the following rules for municipalities that have attempted to incorporate under laws subsequently declared unconstitutional (the Tiny Towns Law) and that have received grants or state-shared revenues or collected property taxes:

- Those municipalities are not required to repay state grants, state-shared taxes, or expended property tax revenues;
- Unobligated grants or state-shared revenues belong to the county;
- Unobligated property tax revenues are returned to taxpayers *pro rata*; and
- If grants, state-shared revenues, and property taxes were commingled, there is a presumption that the municipality expended grant and state-shared revenues before property tax revenues.

Newly Incorporated City Taking Over Services

If a county government is delivering urban services in an area that becomes part of a city by annexation or incorporation, the city has priority in providing public services. The governing body must declare its desire to take over existing services. Arbitration, subject to court review, is ordered if the parties cannot agree (T.C.A. § 5-16-110). Municipalities also may have a prior right to take over a utility district's service territory in newly annexed areas of the municipality (T.C.A. § 6-51-111). That right may be restricted by federal law where the utility district has issued certain bonds (7 U.S.C. 1926(b)). (See Chapter 23, "Countywide Growth Plan, Annexation and Boundary Adjustments, and Dissolution.")

Miscellaneous

Designee on Other Boards and Commissions

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

Other General Laws

Several other chapters of T.C.A. Titles 6 and 7 generally are applicable or available to all cities. Many are summarized in this handbook.

Chapter Four

Ordinances and Codes

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

Procedures for Adopting Ordinances

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

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

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

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

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

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

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

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

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

Code enforcement is discussed fully in Chapters 17 and 21.

Public Hearings Required for Some Actions

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

	Tennessee Code Annotated Section
• Airport – creation of metropolitan airport authority	42-4-104(b)(2)
• Airport – creation of regional airport authority	42-3-104(d)
• Annexation ordinance	6-51-102(b)(4)
• Annexation – progress report on plan of services	6-51-108(b)
• Annexation – amend plan of services	6-51-108(c)
• Bicentennial authority	7-6-104(b)
• Budget – budget estimates in modified council manager cities	6-35-306(a)
• Budget – budget amendments in modified council manager cities	6-35-308
• Budget adoption	6-56-206(b)
• Cable franchise	7-59-202
• Cable service by municipal utility board	7-52-602
• Central business improvement district (CBID) creation	7-84-204 and 513
• CBID amendment	7-84-207(b) and 516
• CBID assessments and damages	7-84-409 and 410
• CBID special assessment	7-84-522
• Certified tax rate	67-5-1701
• Code of ordinances adoption	6-54-508(b)
• Deannexation	6-51-201(b)(1)
• Economic impact plan by IDC	7-53-312(g)
• Enterprise zone establishment	13-28-206(b)
• Hospital authority budget	7-57-401
• Hospital authority creation	7-57-201(b)
• Incorporation (mayor-aldermanic)	6-1-201(a)(3)
• Incorporation (city manager-commission)	6-18-103(a)(3)
• Incorporation (modified manager-council)	6-30-104(c)
• Inner-city redevelopment district	7-84-613
• Inner-city redevelopment district boundaries	7-84-616
• Inner-city redevelopment district special assessments	7-84-622
• Landfill creation	68-211-703

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

Adoption of Code of Ordinances

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

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

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

Chapter Five

Sunshine Law and Public Documents

Open Meetings[1]

The Sunshine Law establishes "... that the formation of public policy and decisions is public business and shall not be conducted in secret" (T.C.A. § 8-44-101).

The law applies to formal meetings that require a quorum and to informal meetings of two or more public-body members if they have the authority to make decisions for or recommendations to a public body. If the participants in the meeting "deliberate toward a decision," then the meeting should be open to the public. Public-body members may not use telephones or other electronic communications to evade Sunshine Law requirements (T.C.A. § 8-44-102).

At meetings, all votes must be public. Secret ballots are not allowed (T.C.A. § 8-44-104).

The Sunshine Law requires "adequate public notice" for both regular and special meetings (T.C.A. § 8-44-103). There is no specific statutory definition of "adequate," but the courts seem to have adopted a "totality of circumstances" test to help determine whether a notice is adequate under a particular set of facts. Retreats are covered under the act and may call for extended public notice (See *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. App. 1990).)

An open meeting is not required for:

- On-site inspections of projects or programs (T.C.A. § 8-44-102(c));
- Chance meetings of two or more public-body members if they do not deliberate toward a decision (T.C.A. § 8-44-102(d));
- Strategy sessions of a governing body in labor negotiations, although actual labor negotiations must be conducted in public (T.C.A. § 8-44-201);
- Meetings of school boards to hear student suspension appeals (T.C.A. § 49-6-3401); and
- Meetings of public hospital boards to discuss, but not to adopt, marketing strategies, strategic plans, and feasibility studies (T.C.A. § 68-11-238).

The courts also have created narrow limitations with respect to communication between the city attorney and the governing body when:

- The discussion concerns a pending lawsuit;
- The governing body is a named party; and
- The discussion is informational only. (See *Smith County Education Association v. Anderson*, 676 S.W. 2d 328 (Tenn. 1984); *Van Hooser v. Warren County Board of Education*, 807 S.W.2d 230 (Tenn. 1991).)

A statute allows certain state bodies to meet using electronic means. This statute generally does not apply to municipal governing bodies, but it does apply to the

governing bodies of municipalities incorporated under the general law city manager-commission charter with a commission of three members and a population of more than 2,500 (T.C.A. § 8-44-108).

Actions found to violate the Sunshine Law are void. If a citizen successfully sues a city for a Sunshine Law infraction, the circuit court may issue an injunction and impose penalties. The court retains jurisdiction over the city for a year, and the city must submit semiannual compliance reports (T.C.A. §§ 8-44-105–106).

[1]See also the MTAS publication *Open Meetings in Tennessee: Compliance with the Public Meetings Law* by Melissa Ashburn.

Open Records[2]

Almost any document of a city official is subject to the state Open Records Law. A person denied access may petition a chancery or circuit court to allow inspection. The burden of proof is on the official, who must justify denying access by a preponderance of evidence. State law instructs the court to construe the Open Records Law broadly to give "... the fullest possible public access to public records" (T.C.A. § 10-7-505 (d)).

Records involving an employment search for any chief administrative officer of any public entity in the possession of any person, including associations and private firms, are open for public inspection (T.C.A. § 10-7-503).

Costs, including reasonable attorneys' fees, may be assessed against a city or its agent for willfully refusing to disclose a public record. In determining willfulness, the court may consider guidance provided by the Office of Open Records Counsel discussed below (T.C.A. § 10-7-505). An official required by a court to allow access will not be civilly or criminally liable (T.C.A. § 10-7-505(f)).

Records custodians must, within seven days of a records request, produce the record; deny the record in writing, giving the basis for denial; or provide an estimated time frame for production. Failure to do so constitutes a denial of the request and gives the requestor a right to bring an action (T.C.A. § 10-7-503).

Open Records Counsel

T.C.A. § 8-4-601 establishes an Office of Open Records Counsel in the comptroller's office to answer questions and provide information to the public and public officials regarding public records. This office issues opinions on open records questions and may mediate disputes relative to open records. The Office of Open Records Counsel has established a schedule of reasonable charges for copying records as guidance for local governments. This schedule can be found at www.comptroller.state.tn.us/open records.

Complying with Requests for Copies

A records custodian may require a request for copies of public records to be made in writing or on a form provided by the Office of Open Records Counsel. The custodian also may require any citizen making a copy request to show photo identification.

A municipality does not have to create a record that does not exist, but redacting confidential information from a record or electronic database does not constitute creating a new record. A municipality may not avoid its disclosure obligations by contractually delegating its responsibility to a private entity (T.C.A. § 10-7-503).

Confidential Records

In general, city employees' personnel records and all other city documents are subject to public inspection under the state's Open Records Law. Some exceptions that affect local government are:

- Employee assistance program records that apply to counseling or referrals for mental health, marriage, alcoholism, and similar personal problems may remain confidential if they are maintained separately from personnel records (T.C.A. § 10-7-504(d)).
- Personal cell phone and home phone numbers, bank account information, Social Security numbers, and driver's license information (except when driving is part of or incidental to the employee's job) and residential street addresses of employees are confidential; the same information for the employees' families and household members is confidential
- (T.C.A. § 10-7-504 (f)(1)).
- Public school student names and identification (Social Security) numbers are confidential (T.C.A. § 49-6-5105).
- City hospital medical records and records of patients receiving medical treatment paid for by a municipality are confidential (T.C.A. § 10-7-504(a)(1)). (The Americans with Disabilities Act requires that all employee medical records be confidential and kept in a separate file.)
- Library records identifying a person who requested or obtained specific materials are not open to the public (T.C.A. § 10-8-101, T.C.A. § 10-8-103).
- Financial statements filed by cities as evidence of their ability to pay workers' compensation claims are confidential (T.C.A. § 50-6-405(b)(2)).

[2]See also the MTAS publication *Open Records: A Guide for Municipal Officials* by Josh Jones.

- Certain "books, records, and other materials in the possession of the Office of the Attorney General and Reporter which relate to any pending or contemplated legal or administrative proceeding in which the Office of the Attorney General and Reporter may be involved" are not open to public inspection (T.C.A. § 10-7-504(a)(5)).
- All files, reports, records, and papers relative to child abuse investigations are confidential (T.C.A. § 37-1-612).
- The Tennessee Rules of Criminal Procedure contains a section that "does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with the investigation or prosecution of the case or of statements made by state witnesses or prospective state witnesses" (Tenn. R. Crim. P. 16(2)). This rule is an exception to the rule of discovery, which requires the state to allow a "defendant to inspect and copy or photograph any relevant written or recorded" statements, records, objects, etc., that are material to the defense's preparation (Tenn. R. Crim. P. 16(a)(1)).[3]
- *Arnold v. City of Chattanooga*, 19 S.W.3d 779 (Tenn. Ct. App. 2000) (permission to appeal denied June 19, 2000) holds that a city attorney's work product prepared in anticipation of litigation or in preparation for trial is confidential and is not subject to disclosure under the Public Records Act.
- Unpublished phone numbers possessed by emergency communications districts are confidential until there is a contract to the contrary between the telephone customer and the service provider (T.C.A. § 10-7-504(e)).
- Information about law enforcement officers, firefighters, emergency medical technicians, correction officers, dispatchers and paramedics who seek help for job-related critical incidents through group counseling sessions led by mental health professionals is privileged and is not subject to disclosure unless the privilege is waived. This includes all memoranda, work notes, work products, case files, and related communication (T.C.A. § 10-7-504(a) (13)(A)).
- Certain taxpayer information, returns, reports, and audits are confidential (T.C.A. § 67-2-108, T.C.A. § 67-4-722, T.C.A. § 67-5-402).
- The identity of an informant who provides information resulting in an eviction for violation of drug laws or for prostitution is confidential (T.C.A. § 66-7-107).
- Home and work telephone numbers, addresses, Social Security numbers, and any other information that could be used to locate an individual who has a protection or restraining order are not open to the public. Such an individual may request this protection and present a copy of the order to the record keeper of the municipality or utility (T.C.A. § 10-7-504(a)(15)).
- Any information pertaining to the location of a domestic violence center or rape crisis center is confidential when the director requests such in writing (T.C.A. § 10-7-504(a)(17)).
- Motor vehicle accident reports retained by law enforcement agencies are subject to public inspection, except for information pertaining to automobile liability insurance contained in such reports (T.C.A. § 55-10-108 (f)).
- Security codes, plans, passwords, combinations, and computer programs used to protect electronic information and government property are confidential (T.C.A. § 10-7-504).
- Filing documents required in order of protection cases, except forms required by the courts, are confidential but may be transmitted to the TBI, emergency response agency, or law enforcement agency (T.C.A. § 10-7-504).
- Records that would allow a person to identify areas of vulnerability of a utility service provider or that would permit unlawful disruption of utility service are confidential. Documents relative to costs of utility property or its protection are not confidential, but confidential information must be redacted when the record is made public. This provision does not limit access to these records by other government agencies performing official functions nor does it preclude any governmental agency from allowing public access to these records in performing official functions (T.C.A. § 10-7-504).
- Contingency plans for responding to terrorist acts are confidential (T.C.A. § 10-7-504).
- Credit card numbers, Social Security numbers, tax identification numbers, financial institution account numbers, burglar alarm codes, security codes, and access codes of utilities are confidential. This information must be redacted when possible when the rest of the record is made public. The requester must pay the costs of redaction (T.C.A. § 10-7-504).
- Photographs and recordings of juveniles by law enforcement officers are confidential.

[3]The Tennessee Supreme Court, in *Schneider v. City of Jackson*, 226 S.W. 3d 332 (Tenn. 2007), held that the common-law law enforcement privilege does not apply in Tennessee. Therefore, police officers' field interview cards and other investigative records not protected by this rule may be open for public inspection.

(T.C.A. § 37-1-155).
- Financial records filed for income verification under the local option property tax freeze are confidential. (T.C.A. § 67-5-705).
- Competitive sealed proposals are confidential until the intent to award is announced. Then the proposals will be open to public inspection. (T.C.A. § 12-3-1011).
- Records addressing marketing strategies and strategic plans of public hospitals are confidential until seven days before the strategies and plans are adopted (T.C.A. § 68-11-238).

Law Enforcement Officers' Records
Like all public employees' records, law enforcement officers' personnel files are generally open to inspection subject to the limitations mentioned in this and the previous section. However, the custodian of the records must record all inspections and notify the officer within three days. The notice must contain the fact that an inspection took place; the name, address, and telephone number of the person making the inspection; for whom the inspection was made; and the date of the inspection (T.C.A. § 10-7-503).

T.C.A. § 10-7-504(g)(1) allows the chief to "segregate" personal information about any undercover police officer or member of his or her immediate family. The chief may refuse to release this information if he or she believes it may endanger the officer or the officer's family.

A law enforcement officer's address; home and cell phone numbers; place of employment; names, work addresses, and phone numbers of the officer's immediate family; and the names, locations, and phone numbers of any educational institution or day care center where the officer's spouse or child is enrolled must be redacted when there is a reason not to disclose the information as determined by the chief when the request is for a professional, business or official purpose. This is in addition to other information made confidential and that must be redacted. The chief must consider the specific circumstances in making the determination. If the chief decides to withhold information, he or she must give specific reasons in writing to the requester within two business days and must release the redacted file. When the chief determines there is no reason to keep personal information confidential, he or she must notify the officer and give the officer a reasonable opportunity to oppose release of the information. A request for personal information about a law enforcement officer must include the requester's business address, business phone number, and e-mail address. It also must include the name and contact information for a supervisor for verification (T.C.A. § 10-7-504).

Records Preservation and Destruction

Municipal public records are governed by T.C.A. §§ 10-7-701 and 702. They are defined as "all documents, papers, records, books of account, and minutes of the governing body of any municipal corporation within said county or of any office or department of such municipal corporation within the definition of 'permanent records,' 'essential records,' and/or 'records of archival value' " (T.C.A. § 10-7-301). T.C.A. § 10-7-702 authorizes the Municipal Technical Advisory Service (MTAS) to publish retention schedules of records for municipal officials. (Contact the MTAS library or Web site for the most recent publication on this topic.)

Electronic Records
T.C.A. §§ 47-10-101, *et seq.*, allow cities to conduct business by electronic means and to determine the extent to which they will send, accept, and rely on electronic records and electronic signatures. T.C.A. § 47-10-112 provides that electronic records may be retained and have the same status as original records. Electronic records are subject to open records and retention requirements just like other records.

Electronic Mail
A municipality with electronic mail must adopt a written policy addressing any monitoring of e-mail. The policy must include a statement that any form of e-mail may be a public record open to inspection (T.C.A. § 10-7-512).

Disposal of Records[4]
T.C.A. § 10-7-702 allows any municipal governing body to authorize by resolution the disposal, including destruction, of permanent paper records that have been copied to another medium, such as microfilm or CD-ROM, in accordance with T.C.A. § 10-7-121. Other records may be destroyed when the retention period prescribed by the retention schedule used by the municipality has expired.

Charges for Geographic Information System Data

Cities may recover as fees for use of geographic information system (GIS) data 10 percent of the total development costs of the system. An additional 10 percent may be recovered if approved by the governing body and by the state Information Systems Council. After this amount is recovered, fees must be reduced to recover only maintenance costs of the system.

Charges for development costs of GIS data may not be made for nonbusiness use by an individual nor for news gathering by news media. For these uses, only charges for the cost of reproduction may be made (T.C.A. § 10-7-506).

Breach of Computer Security System

Municipalities that hold personal information in a computer system that is not lawfully available to the public must give notice of any breach of the system that would disclose the personal information to any unauthorized person. The disclosure must be made to the person or persons whose information might have been obtained. The law outlines the circumstances under which the notice must be made and the methods for giving the notice (T.C.A. § 47-18-2107).

All municipalities must create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable storage devices used by municipalities. Failure to comply creates a cause of action or claim for damages against the municipality if a citizen of the state proves by clear and convincing evidence that the citizen was a victim of identity theft due to a failure to provide safeguards and procedures regarding that citizen's confidential information. Apparently there is no limit to this liability (T.C.A. § 47-18-2901).

Identity Theft Precautions

The federal Fair and Accurate Credit Transactions Act of 2003 (FACTA), Public Law 108-159, requires utilities and other municipal departments that defer payments for services to take precautions to protect personal identifying information in their records. The municipality must have a policy that protects personally identifying financial and medical information and provide training on the policy. For more specific information and a model identity theft policy, see the MTAS publication *Model Identity Theft Policy and FACTA Compliance* by Josh Jones.

[4]See also the MTAS publication *Records Management for Municipal Government: A Reference Guide for City Officials and Municipal Public Records Custodians* by Dennis Huffer. This publication contains a suggested retention schedule for municipal records.

Chapter Six

City Courts[5]

The Tennessee Constitution empowers the state legislature to define the authority of municipal courts. The constitutional language states that the legislature may "vest such jurisdiction in corporation courts as may be deemed necessary" (Article VI, Section 1).

Any city may establish a municipal court, but Tennessee does not have a uniform system for creating municipal courts. Each private act and statutory charter has its own procedures for appointing a city judge and creating a city court. Under the general law charters and provisions dealing with home rule cities:

- The mayor-aldermanic charter provides for the board to elect or appoint a city judge (T.C.A. § 6-4-301);
- The city manager-commission charter provides for the commission to appoint a city judge. Cities meeting population requirements may elect a judge. (T.C.A. § 6-21-501);
- The modified city manager-council charter provides for an elected city judge (T.C.A. § 6-33-102); and
- City judges in home rule municipalities are "... appointed on nomination of the mayor or chief executive officer, concurred by the city council." After judges are appointed, they must run in the next general election. The governing bodies of home rule municipalities are empowered to create additional divisions of a city court (T.C.A. §§ 16-17-101–105).

Powers of Municipal Courts

In addition to their authority to hear municipal ordinance violation cases, a number of private act charters, the general law charters, and the statutes governing home rule municipal courts give city courts the same jurisdiction as sessions courts.

T.C.A. § 16-18-311, however, limits the exercise of general sessions jurisdiction if the court did not exercise that jurisdiction on May 12, 2003. This section establishes a complex procedure for granting the authority to exercise this jurisdiction.

In *Town of South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992), the Tennessee Supreme Court held that municipal court judges exercising concurrent jurisdiction with a state general sessions court must meet all of the qualifications of Article VI, Section 4, of the Tennessee Constitution. Judges must be:

- Elected for an eight-year term;
- Thirty years old;
- A resident of the state for five years; and
- A resident of the district or circuit one year before the election.

The Supreme Court relied on the principle of the separation of judicial and legislative powers, reasoning that "judges charged with interpreting the criminal laws of this state should be elected ... to assure an independent judiciary free of the political caprice and whims of other government branches." Subject to the push and pull of a city council, an unelected municipal court judge exercising criminal jurisdiction did not meet the court's standard for independence.

The following points illustrate Tennessee's municipal courts' stand regarding concurrent jurisdiction:

- There is an option for an appointed or elected judge under the general law mayor-aldermanic charter (T.C.A. § 6-4-302);
- Two-thirds of Tennessee's cities are chartered under private acts, and a large percentage of those charters grant the municipal court concurrent jurisdiction with general sessions courts and provide for an appointed judge;
- Several municipal courts in general law city manager-commission charter cities have been granted concurrent jurisdiction with general sessions courts (T.C.A. § 6-21-501);
- Tennessee has several home rule municipalities. T.C.A. § 16-17-102 provides that judges in

[5]Chapter No. 914, Public Acts of 2004, designated the Municipal Court Reform Act of 2004, made extensive revisions to city court authority. It is codified at T.C.A. §§ 16-18-301, *et seq.* Its major provisions are summarized in this chapter.

See also the MTAS publication *Municipal Courts Manual* by Rex Barton and Melissa Ashburn.

home rule municipalities shall be "appointed on the nomination of the mayor or chief executive officer, concurred on by the city council or other legislative body, but said judges so appointed shall run for election in the next general election." Grants of concurrent jurisdiction also are found in many home rule charters themselves. Some home rule charters also provide for appointing the municipal judge. In addition, T.C.A. § 16-17-102 does not specifically provide for a judicial term of eight years or require that the municipal judge meet the other constitutional qualifications of Article VI, Section 4;

- T.C.A. §§ 16-18-201, *et seq.*, authorize municipalities to provide, by ordinance, for the election of municipal court judges; however, they do not grant municipal court judges concurrent jurisdiction with general sessions courts; and
- T.C.A. § 16-18-311 makes it extremely difficult to be granted the authority to exercise general sessions jurisdiction after May 12, 2003.

In *City of White House v. Whitley*, 979 S.W.2d 262, (Tenn. 1998) the Supreme Court was asked whether Article I, Section 8, of the Tennessee Constitution prevents non-attorney judges from presiding over trials of criminal offenses punishable by incarceration. The court held that individuals facing such charges are constitutionally entitled to an attorney judge. Therefore, non-attorney judges who exercise concurrent general sessions court jurisdiction may not preside over criminal cases if the punishment includes jail.

It seems fairly clear that a municipal court judge exercising concurrent jurisdiction must be a resident of the city in which he or she presides over court.

In courts where cases of state law violations may be prosecuted, the district attorney general acts as prosecutor (T.C.A. § 8-7-103).

Penalties for Violations of Municipal Ordinance

A fine for a municipal ordinance violation may not exceed $50 unless the fine is "remedial." *City of Chattanooga v. Davis* and *Barrett v. Metropolitan Government of Nashville and Davidson County*, 54 S.W. 3rd. 248 (Tenn. 2001). Examples of fines that are remedial include those that recover administrative expenses, disgorge ill-gotten gains, provide restitution, or are prospectively coercive. Home rule municipalities may recover actual administrative expenses incurred to enforce ordinances that prohibit false threats or hoaxes involving biological weapons, destructive devices, or weapons of mass destruction (T.C.A. § 6-54-306).

It is questionable whether any municipal court in Tennessee may impose jail sentences for municipal ordinance violations. The only exception may be the willful nonpayment of a fine for an ordinance violation. An indigent person may not be jailed for nonpayment of penalties (T.C.A. § 40-24-104, *Tate v. Short*, 41 U.S. 395, 28 L.Ed. 2d 130 (1971)). T.C.A. § 29-9-108 makes failure to appear without just cause a contempt of court offense punishable by a $10 fine and up to five days imprisonment. However, this statute applies only to municipal courts in metropolitan counties, courts that hear violations of municipal ordinance cases, and city courts that exercise jurisdiction over certain environmental cases in cities in Shelby County. In the latter instance, the defendant also may be punished for contempt of court for failure to correct a violation of the municipal code relating to health, housing, fire, or building and zoning codes.

Court Costs[6]

Court costs must be prescribed by charter or ordinance. One dollar of this amount must be forwarded by the clerk to the state treasurer to pay for training for city judges and city court clerks (T.C.A. § 16-18-304).

Audits

The accounts and records of the municipal court must be audited annually (T.C.A. § 6-56-105(a)).

[6]A state litigation tax of $13.75 applies to each case in municipal courts (T.C.A. § 16-18-305). A municipality may levy an equivalent local litigation tax. For a short discussion of this local tax, see Chapter 7, “Municipal Revenues,” in this handbook.

Reports to Administrative Office of the Courts by Municipal Courts with General Sessions Jurisdiction

T.C.A. § 16-1-117(a)(3) and (4) require municipal courts with general sessions jurisdiction to report data to the Administrative Office of the Courts on all criminal and civil cases. Caseload data must be reported once a month and must show all cases filed and disposed of in a month by the 15th of the following month.

Training of City Judges and Court Clerks

City judges and city court clerks must receive three hours of training each year provided through the Administrative Office of the Courts. Failure of the judge to receive the training after a six-month grace period renders his/her judgments null and void. Both judges and clerks must be compensated and reimbursed for the training in accordance with the municipality's travel policy (T.C.A. § 16-18-309). The Administrative Office of the Courts and the Department of Safety must also provide annual training to court clerks on the necessity and importance of preparing and forwarding to the Department of Safety the abstract forms for conviction of traffic violations (T.C.A. § 55-10-306).

Concurrent Holding of Other Offices by Judge

The municipal judge may not hold any other office, such as city recorder or mayor, with the municipality. Judges holding other offices on March 1, 2005, who are recorders or mayors or another city official, are grandfathered (T.C.A. § 16-18-308).

Appeals

Any person dissatisfied with a municipal court judgment must appeal within 10 days, Sundays exclusive, to the circuit court and give a $250 appeal bond (T.C.A. § 16-18-307).

Post-judgment Interest

Municipal court decrees earn post-judgment interest at the rate of 10 percent (T.C.A. § 47-14-121).

Sitting By Interchange

T.C.A. §16-18-312 allows municipal court judges to sit by interchange for other municipal court judges.

Tennessee Municipal Judges Conference

Each municipal judge is a member of the Tennessee Municipal Judges Conference and must attend its annual meeting unless physically incapable. The municipality must pay the costs of attendance (T.C.A. § 17-3-301).

Other Provisions

T.C.A. § 16-1-102 gives "every court ... power to punish for contempt." The Tennessee Supreme Court held that a city court may exercise such power (*May v. Krichbaum*, 152 Tenn. 416, 278 S.W. 54 (1925)). Contempt of a municipal court is punishable by a maximum fine of $50 (T.C.A. § 16-18-306).

City judges in cities with a population of more than 160,000 must be lawyers authorized to practice law in

Tennessee courts (T.C.A. § 17-1-106(d)). City judges in general law modified city manager-council cities also are required to be licensed attorneys (T.C.A. § 6-33-102). All municipal judges are under the jurisdiction of the Court of the Judiciary (T.C.A. § 17-5-102). T.C.A. § 16-18-301 empowers municipal court judges to administer oaths.

The judge is required "to keep or cause to be kept" records on traffic charges that reflect "every official action by the court or the Traffic Violations Bureau ... including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, and the amount of fine or forfeiture resulting from every traffic complaint, warrant, or citation ...." (T.C.A. § 55-10-306).

Municipal clerks may accept fines, court costs, and other fees by credit card and collect a processing payment not exceeding 5 percent of the fine, court cost, or other fee (T.C.A. § 8-21-107). Fines also may be paid by check or money order (T.C.A. § 9-1-108). If a check or money order for fines, court costs, or other fees is returned unpaid, T.C.A. § 9-1-109 authorizes a penalty of 1 percent of the check or money order. If the check or money order is less than $2,000, the penalty is $20 or the same amount as the check or money order, whichever is less.

Fines and costs imposed by a municipal court judge that are not paid after 30 days may be collected by execution issued by the municipal court clerk using the procedure prescribed for general sessions courts in T.C.A. § Title 26, Chapters 1, 2, 3, and 4. A police officer is authorized to serve the necessary papers anywhere in the county (T.C.A. § 6-54-303). The local governing body may authorize a collection agency to collect fines and costs that are more than 60 days overdue. The contract with the collection agency must be in writing, and the agency’s fee may not exceed 40 percent of the sums collected (T.C.A. § 40-24-105).

Collected fines and costs resulting from a municipal court exercising concurrent jurisdiction with general sessions courts must be shared with the state and county except in Madison and Gibson counties (by population classification), where they are to be remitted to the respective municipality (T.C.A. § 6-54-304(2)).

T.C.A. § 39-16-609 makes failure to appear as directed by a summons or citation a misdemeanor or felony, depending on the crime charged.

Administrative Inspection Warrants

Municipal judges who are lawyers may issue administrative inspection warrants under T.C.A. § 68-120-117.

Chapter Seven

Municipal Revenues

A primary responsibility of a city's governing body is to determine the city government's functions and activities and how they will be financed. Since cities are required to operate with balanced budgets, they continually face the problem of raising revenues to match rising expenditures. Following is a general treatment of the major revenue sources available to Tennessee cities.

Property Tax

Levy

Article II, Sections 28 and 29, of the Tennessee Constitution and T.C.A. § 67-5-101 give cities the authority to tax all real and personal property unless state law provides an exemption. Property tax is the mainstay of municipal revenue for nearly all Tennessee cities. (Some small cities make no levy.) Many cities derive substantial revenues from other sources. But even in those cities, property tax is the primary "budget balancer" because the tax rate and imposition of the tax are subject to the discretion of the governing body. T.C.A. § 67-5-103 eliminated all existing maximum tax rate limitations, whether imposed by home rule, general, or private charters; however, it is not clear if reimposing such a limitation by a subsequent charter provision is allowed (T.C.A. § 67-5-103).

Assessment

Local assessments generally are made by county assessors. The act that consolidated city assessment offices with county assessors directs that a property assessment roll be furnished to each city at the cost of reproduction (T.C.A. § 67-1-513). The assessor also is required to certify to the mayor by the first Monday of every November a copy of the assessor's annual aggregate statement showing the total assessed value of the property in each city, civil district, and ward (T.C.A. § 67-5-807).

The county board of equalization is the only body in each county to hear assessment appeals. However, a city located in two or more counties is authorized to make its own assessments and have a board of equalization. It may contract with the state board of equalization for assessment services. T.C.A. § 67-1-513 provides for cities to appoint some members to county boards of equalization. The number of appointees depends on the size of the city. For example, in counties having one or more cities with between 10,000 and 60,000 residents, each of the two largest cities with populations exceeding 10,000 appoints one member to the board (T.C.A. § 67-1-401(a)(3)). Supervision and technical assistance for the counties' assessment functions are provided by the state board of equalization (T.C.A. § 4-3-5103, 5105; T.C.A. § 67-1-307).

The property of privately owned public utilities (railroads, bus lines, gas companies, etc.) is assessed by the Tennessee Comptroller of the Treasury, and the assessments are subject to review and revision by the state board of equalization. The comptroller certifies to each city recorder or other tax-collecting official the assessed valuations subject to local taxation (T.C.A. §§ 67-5-1301–1331).

Periodic Reappraisal

Every four or six years, as determined by the assessor with the county governing body's approval, reappraisal of all real property and equalization of assessments are required in every Tennessee county unless the state board of equalization determines that reappraisal is unnecessary for a particular county. With the board's approval, the program may be undertaken by the county property assessor and staff, the Tennessee Division of Property Assessments, or a professional firm employed for this purpose. Program costs are prorated among the state, counties, and cities (T.C.A. § 67-5-1601).

All property (real, personal, operating, and nonoperating) of private utilities is reappraised by the comptroller of the treasury each year (T.C.A. §§ 67-5-1301–1302). As a result, in inflationary times the share of a jurisdiction's taxes paid by utilities could grow for six years until the local reappraisal shifts a fair share of the burden back to homeowners and other locally appraised property owners. To prevent such tax shifting, the state board of equalization conducts sales ratio studies every two years to measure how up to date a county's assessments are. The analysis takes a sample of properties that have recently been sold and compares actual sale prices to values on the county assessor's books. The comptroller of the treasury uses the resulting sales ratios to adjust the taxable assessed value of the utility property it appraises (T.C.A. §§ 67-5-1605–1606). A similar process is prescribed for the state board of equalization

to equalize the personal property assessment used by businesses and manufacturers (T.C.A. § 67-5-1509).

Any city lying in more than one county will be reappraised under a separate plan of reappraisal on a cycle determined by the board of equalization. The reappraisal will be done under contract with the state unless the city has a separate assessment office (T.C.A. § 67-5-1601(b)).

Reappraisal Cycles
T.C.A. § 67-5-1601 requires six-year reappraisal cycles. However, the state board of equalization may approve four-year cycles, and the assessor and county legislative body may allow five-year cycles. The board of equalization may extend the reappraisal cycle of a county beyond the six years to synchronize with a contiguous county's cycle when a city lies partly in each county and contains property of the federal government for which in lieu of tax payments are being made. The statute also changes state funding of reappraisals to a per parcel grant. State grants to four- and five-year programs are limited to the amount required by a six-year program. The board of equalization will determine the initial schedule of review and revaluation.

Certified Tax Rate
After completing a general property reassessment, a city must determine the tax rate on the new total assessment that would produce no more than the amount of property tax revenue generated the preceding year. This rate is called the certified tax rate.

To reflect extraordinary assessment changes, the municipality's governing body may adjust the calculated certified tax rate according to a method approved by the state board of equalization. The city must submit for review a new, tentative tax rate and supporting calculations to the executive secretary of the state board of equalization. The municipality must then consider the board official's report before fixing a certified tax rate. When there is an excessive adjustment, the board shall order recapture in the following year if the certified tax rate has been overstated because the appeals adjustment was overestimated. A public hearing is necessary if the city exceeds the recapture rate.

A city may not take an automatic windfall of increased revenue from a reappraisal. However, if a city wants to increase its revenue after a reappraisal, it has to formally advertise its intention before the council votes to adopt a tax rate that is higher than the certified tax rate (T.C.A. §§ 67-5-1701–1703).

Assessment Ratios
Article II, Section 28, of the Tennessee Constitution provides for using the following percentages of full value to determine assessments:

- Public utility real and tangible personal property–55 percent;
- Industrial and commercial real property–40 percent;
- Industrial and commercial tangible personal property–30 percent;
- Residential and farm real property–25 percent; and
- Other tangible personal property–5 percent (T.C.A. §§ 67-5-801, 901).

Property Tax on Personal Property
Tangible personal property is subject to the property tax, but the state constitution provides an exemption for personal clothing, household goods, and furnishings (Article II, Section 28).

The system for reporting personal property relies largely on the initiative of the individual taxpayer. Consequently, in the past there have been significant differences in the extent of reporting and payment of personal property taxes in different counties across the state. Legislative enactments over the past several years have made the system more uniform. For example, T.C.A. § 67-5-215(b) was repealed in 1984. It authorized county governing bodies to place a zero value on tangible personal property owned by businesses subject to the Business Tax Law. The legislature also closed a loophole that allowed leased personal property to escape taxation (T.C.A. § 67-4-702(a)(7), T.C.A. § 67-5-502, 901). The same act established statewide depreciation schedules for valuing industrial personal property (T.C.A. § 67-5-903). The act also requires the state board of equalization to direct that commercial and industrial tangible personal property assessments are equalized with real property in each county by applying the county's real property appraisal ratio to the depreciated value of the taxpayer's personal property (T.C.A. § 67-5-1509).

Greenbelt Law
Lower assessments are provided to encourage open-space land in urban areas. Owners may petition the county assessor to classify land as agricultural (minimum tract size 15 acres), forest (minimum tract size 15 acres), or open space (minimum tract size three acres). An open space easement of at least 15 contiguous acres granted to a qualified conservation organization also qualifies for greenbelt treatment. If so classified by the assessor, the land is assessed and taxed at its use value. Normally, land is appraised at the value an arms-length purchaser would pay. Use value is calculated by capitalizing the annual income a property owner is earning by using his or her land. T.C.A. § 67-5-1008(c) caps the amount greenbelt land can increase in value because of a reappraisal at 6 percent multiplied by the number of years since the latest reappraisal.

An appeals procedure is provided for adverse decisions by the assessor. To limit the fiscal impact and inequities of this tax break, a maximum of 1,500 acres for one owner in any one taxing jurisdiction is fixed, and affiliated ownership is to be included for any person with legal or equitable title in more than 50 percent of the land ownership. Noncontiguous tracts must be located in the same county to qualify as agricultural land for greenbelt purposes. A procedure is provided for determining annually additional taxes that would be payable if the land were assessed at its real value. If the land is subsequently converted to any other use, such cumulative taxes for the preceding three years (agricultural and forest) or five years (open space) – referred to as rollback taxes – must be paid on the first assessment roll following the conversion.

When the assessor determines that there is a liability for rollback taxes, the assessor notifies only the tax-collecting official. This official must then send a notice demanding payment to the responsible person.

The act that created the use value assessments provides a more sure and direct method for a municipality to preserve its open space. Cities and counties also are empowered to expend funds to acquire "the fee or any lesser interest ... necessary to achieve the purposes of this act"
(T.C.A. §§ 67-5-1001–1050).

Collection
When read together, T.C.A. § 67-1-701–702, T.C.A. § 67-5-1801, and T.C.A. § 67-5-2005 permit a municipality to collect its own property taxes (if authorized by its charter) or to turn over such collection to the county trustee. Generally, if the county trustee collects the municipality's taxes, the tax due date is the first Monday in October, and the delinquency date is the following March 1. The effect of the due and delinquency dates prescribed by the municipal charter or ordinance is outlined in the "Delinquent Property Taxes" section later in this chapter.

By the 10th of each month, the trustee must make settlement and pay the city its share of taxes collected the previous month (T.C.A. § 67-5-1902). The trustee's office keeps the following commissions on taxes collected:

- Up to $10,000–6 percent;
- $10,000 to $20,000–4 percent;
- More than $20,000–2 percent.

In computing the trustee's compensation, all state, county, school, and special funds are lumped together, and each of the political subdivisions must pay its respective portion of the above commissions
(T.C.A. § 8-11-110).

A trustee who collects city taxes must "execute such bonds as may be required ... by the law or any ordinance of any city or town for the collection and prompt payment of all taxes due said city or town"
(T.C.A. § 67-5-1901(b)).

A municipality's governing body may provide by ordinance or resolution for the early payment of property taxes and provide a taxpayer rebate as follows:

- Two percent within 30 days of the due date, and
- One percent within 30 to 60 days of the due date.

If the county trustee has the authority established by T.C.A. § 67-1-702 to collect taxes any time after July 10 prior to the first Monday in October, a municipality's governing body by the same method may provide for the early payment of property taxes and give a taxpayer rebate as follows:

- Three percent if paid by the end of July;
- Two percent if paid by the end of August; and
- One percent if paid by the end of September.

In the latter instance, the trustee may accept such payments at his or her discretion (T.C.A. § 67-5-1804).

The purchaser of a business is required to withhold an amount to cover any taxes payable on personal property until the seller produces a receipt from the municipal collector that all taxes, interest, and penalties have been paid. The purchaser's failure to do so makes him or her jointly liable for any such unpaid amounts (T.C.A. § 67-5-513).

Partial Payments

All trustees in all counties may accept partial payments of property taxes. In Metro Nashville, the minimum payment is no more than 15 percent or $25, whichever is less (T.C.A. § 67-5-1801(e)).

When Delinquent if Mailed

"Any tax report, claim, return, statement, remittance, or other tax document required or authorized to be filed with or any payment made to the state or to any political subdivision thereof, which is ... transmitted through the U.S. mail to the state or political subdivision and postmarked no more than 24 hours subsequent to the last date for the timely filing of such document or payment shall not be considered delinquent" (T.C.A. § 67-1-107).

Delinquent Property Taxes

A municipality has the option to collect delinquent property taxes any one of four ways:

- Under the provisions of its charter for the collection of delinquent property taxes;
- Under T.C.A. §§ 6-55-201–206;
- By the county trustee under T.C.A. § 67-5-2005 (a)-(c); or
- Under T.C.A. § 67-5-2005 (d).

If the municipality has the authority under its charter to collect its property taxes, but the charter makes no provision for the collection of delinquent property taxes, then the municipality may provide by ordinance for the collection of delinquent property taxes. (As a practical matter, it is unlikely that any municipal charter authorizes a municipality to collect its own property taxes but does not authorize it to collect delinquent property taxes.)

If a municipality uses the county trustee or the delinquent tax attorney to collect its delinquent property taxes, the municipality must certify its delinquent taxes to the trustee by April 1 of the second calendar year after the taxes become due.

T.C.A. § 67-5-2405 requires the county delinquent tax attorney to bring suit in the name of the county, in the county's behalf and for the benefit of any municipality that has certified a delinquent tax list.

Property certified to the county trustee shall be advertised and sold by the county trustee at the same time, in the same manner, and as a part of the county trustee's other sales of property for state and county taxes (T.C.A. § 67-5-2005).

T.C.A. § 67-5-2010(a)(1) provides that, "To the amount of tax due and payable, a penalty of one-half percent and interest of one percent shall be added on March 1 following the tax due date and on the first of each succeeding month except as otherwise provided in regard to municipal taxes."

Therefore, if the municipality collects its own current property taxes but turns the collection of its delinquent property taxes over to the trustee, the property tax due and delinquency dates, the penalties, and the interest are those set out in the municipality's charter or ordinance.

T.C.A. § 67-5-2010(b) provides that, in all instances in which current municipal taxes are collected by the county trustee, the following provisions and rules for collecting delinquent taxes that may be due to the municipalities, and none other, shall prevail and obtain, anything in this chapter to the contrary notwithstanding:

- The taxes levied and assessed by such municipalities shall become due and delinquent on the date now provided by existing law; and
- If the municipal taxes are not paid on or before the date fixed for delinquency in the amount due and payable, a penalty of 0.5 percent and interest of 1 percent shall be added on March 1 following the tax due date and on the first day of each succeeding month.

In this circumstance, where the county trustee collects the municipality's current or delinquent property taxes, the property tax due and the delinquency dates remain those set out in the municipality's charter or ordinance; however, the penalty and interest prescribed by that statute prevail over the municipality's charter or ordinance and do not attach until March 1 following the tax due date.

A municipality is barred from collecting property taxes following 10 years after April 1 of the year in which such taxes became delinquent (T.C.A. § 67-5-1806).

T.C.A. § 67-5-1512 outlines the conditions under which taxpayers appealing their assessments must pay all or a part of the property tax and interest during the appeals process as a condition of the appeal.

Property taxes, interest, and penalties owed to the state, county, and municipality on property shall become and remain a first lien upon the property from January 1 of the year for which the taxes were assessed. Property taxes are also a personal debt of the property owners as of the same date (T.C.A. § 67-5-2101).

Cities have the authority to give foreclosed properties to private, nonprofit entities (T.C.A. § 67-5-2509(d)(2)).

Extension of Due Date for Military Personnel Engaged in Hostilities

T.C.A. § 67-5-2011 extends the due date of property taxes owed by persons in the armed services or who are called into active duty from a reserve or National Guard unit and who are engaged in hostilities until 180 days after the conclusion of the hostilities or 180 days after the person is transferred from the area of hostilities, whichever is sooner.

Intangible Personal Property

The constitution allows taxing stocks, bonds, and other intangible personal property. Intangible personal property is classified and assessed as the legislature directs. Banks and other financial institutions may be taxed in such manner as the legislature provides, and these taxes are in lieu of the property tax on shares of stock, customers' accounts, or any other type of intangible property (Article II, Section 28). Cities do not tax intangible property. However, they do receive a share of the Hall income tax (see later section entitled "Hall Income Tax"), as well as revenue from property taxes on intangible property having no actual *situs* in this state paid by utilities and carriers and distributable to counties, municipalities, and taxing districts (T.C.A. § 67-5-1325).

Property Tax Relief for the Elderly and Disabled

Article II, Section 28, of the Tennessee Constitution provides that the legislature "shall provide, in such manner as it deems appropriate, tax relief to elderly, low-income taxpayers through payments by the state to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed directly or indirectly upon counties, cities, or towns." It also authorizes the legislature to provide tax relief to totally and permanently disabled homeowners "as provided herein for the elderly."

T.C.A. § 67-5-702 and T.C.A. § 67-5-703, respectively, provide state-reimbursed tax relief to people age 65 and older and to totally and permanently disabled homeowners under rules and regulations adopted by the state board of equalization. These property owners must meet maximum income requirements set annually in the state's General Appropriations Act. The ceiling is revised yearly based on the cost-of-living adjustment for Social Security recipients. The tax relief applies to the first $25,000 of the home's full market value. T.C.A. § 67-5-704 provides state-reimbursed tax relief to severely disabled veterans and their surviving spouses on the first $175,000 of the full market value of their homes, regardless of their total annual income.

The state board of equalization has issued rules and regulations governing the administration of T.C.A. §§ 67-5-701–704, including definitions, age requirements, disability requirements, widows of disabled veterans requirements, certification of ownership and residency requirements, income requirements, methods and handling of applications (including forms and documents), and decertification requirements (Rule 0600-3-.01, *et seq.*).

Four statutes authorize municipalities to create their own supplemental tax relief programs for the elderly and disabled. Two are pure tax relief statutes, and two are tax deferral statutes. Under T.C.A. § 67-5-705, the city may, by resolution, adopt a program freezing the property tax of people age 65 and older whose annual incomes do not exceed $12,000. The tax is frozen at the amount they paid in the tax year they reached 65. Improvements to the property are taxed as prescribed by the statute. In *Perkins v. Alexander*, the Chancery Court of Shelby County on January 10, 1980, declared that statute violated Article II, Section 28, of the Tennessee Constitution, which requires that all property be taxed according to its value, that taxes be equal and uniform within a taxing jurisdiction, and that tax relief for the elderly could not be imposed by the state upon local governments. Although that case has no formal precedential value, it is persuasive.

T.C.A. § 67-5-701(j) allows all counties and municipalities to appropriate funds for the tax relief of elderly low-income and disabled homeowners who are eligible for tax relief under state law. The tax relief provided cannot exceed the total taxes actually paid.

T.C.A. § 67-5-1515 allows a property tax freeze for certain elderly homeowners in Shelby County. This tax freeze is optional for the county governing body but would also apply to municipal taxes.

T.C.A. §§ 7-64-101 *et seq.*, (Chapter 821 [Public Acts 1998] Deferral) authorize municipalities to *defer*, by resolution, taxes on principal residences owned by single people, married couples over the age of 65, and totally disabled people whose gross annual income is less than $12,000. The city's governing body may by a two-thirds vote approve an increase in the gross income to $25,000 a year; approval must be certified to the Tennessee Secretary of State. The tax deferral applies to the principal residence and a maximum of one acre of land and to a maximum of $60,000 appraised market value. Improvements to the property are taxed as provided in the statute. The assessment of taxes continues on an annual basis, and the tax deferral continues until a terminating event such as death of the person(s) to whom the deferral was granted or sale of the residence. The deferred taxes constitute a lien on the property and earn 10 percent interest annually but are not subject to the statutory penalties for delinquent taxes. The schedule for payment of deferred taxes after a terminating event is set out in the statute.

T.C.A. §§ 7-64-201, *et seq.*, (Chapter 659 [Public Acts 1980] Deferral) authorize municipalities by resolution to *defer* taxes on principal residences owned by taxpayers and their spouses over the age of 65, totally and permanently disabled taxpayers, and disabled veterans whose combined incomes do not exceed $12,000 annually. The city's governing body may by a two-thirds vote approve an increase in the gross income to $25,000 a year; approval must be certified to the Tennessee Secretary of State. The tax deferral is limited to the principal residence and one acre of land and to a maximum appraised value of $50,000. A qualifying taxpayer who turned 65 on or before March 27, 1980, is entitled to a tax deferral on taxes in excess of his or her 1979 taxes, and a qualifying taxpayer who turned 65 after March 27, 1980, may defer any taxes in excess of the amount of taxes in effect the year the taxpayer turned 65. A qualifying taxpayer who purchases property after turning 65 may defer taxes in excess of the amount of taxes owed in the year the property was purchased. Improvements to property are taxed as provided in the statute. The statute's provisions for a tax lien and interest are similar to those in T.C.A. §§ 7-64-101, *et seq.* Termination of deferral events include death of the person(s) to whom the deferral was granted, sale of the residence, and change in the use of the property from the principal place of residence.

Local Option Property Tax Freeze

In addition to the state property tax relief program mentioned above, T.C.A. § 67-5-705 allows municipalities and counties to provide property tax relief to homeowners 65 years of age and older who have low income. The municipality must pass an ordinance to implement the freeze, which applies to the elderly homeowner's principal residence. Taxes would be frozen at the "base tax," which is the amount due in the year the taxpayer becomes eligible for the program and successfully applies. Improvements made or discovered after the tax base is established, however, would increase the taxes owed.

To qualify for the freeze, the taxpayer must be 65 years of age or older and have income, combined with that of any other owners of the residence, within the greater of the weighted average median household income for (1) age groups 65 to 74 and (2) age groups 75 and over, and the state tax relief income limit.

The weighted average median household income for each county must be published annually by the comptroller. The taxpayer must apply annually to the tax collecting official, who approves or denies the application.

The comptroller will provide income verification and other services to implement this freeze, and municipalities and counties must pay the costs. Financial records are confidential but will be made available to officials who administer this program. A taxpayer who knowingly provides false information to take advantage of the program commits a Class A misdemeanor.

The maximum size of lots (5 acres) eligible for the freeze and other rules for implementation of the program are established by the state Board of Equalization through the Division of Property Assessments.

Golf Courses as Farm Property
Golf course playing-hole improvements are now included as farm property. Therefore, the property tax rate is 25 percent rather than 40 percent of the appraised value (T.C.A. § 67-5-501(3)).

In-Lieu-of-Tax Payments[7]

Tennessee Valley Authority In-Lieu-of-Tax Payments
The Tennessee Valley Authority (TVA) pays 5 percent of gross power sales proceeds to the state in lieu of taxes. Counties and cities are allocated 48.5 percent of the increase in TVA payments made to the state above the amount received in the base year (fiscal year 1978). Counties receive 70 percent of this allocation, and cities receive 30 percent.

Distribution of the city share is based on population. Three percent of the earmarked revenue is allocated to cities and counties affected by TVA power plant construction. Cities that received TVA in-lieu-of-tax payments from the state before implementing the per capita formula continue to receive that amount in addition to the formula allocation (T.C.A. §§ 67-9-101–103). (For the most current per capita figure, see MTAS's annual *Hot Topic* on state revenue estimates.)

Utility Tax Equivalents
Tennessee cities that operate electric distribution systems are allowed to take tax equivalents up to maximums prescribed by the Municipal Electric System Tax Equivalent Law of 1987. This law replaces former statutory provisions and supersedes all charter or private act provisions.

The allowed payment is an amount equal to the property tax the system would pay if it were a private utility, plus 4 percent of the average of revenue minus power costs from electric operations for the preceding three fiscal years (T.C.A. § 7-52-304). A city's governing body is allowed to prescribe the amount up to the maximum after consulting with a power board to determine the "fair share of the cost of government" borne by the municipality on behalf of the utility. The act also provides for tax equivalent payments to the county government and to neighboring municipalities served by a city's electric distribution system (T.C.A. §§ 7-52-301–310).

Another act contains almost identical provisions and is applicable to gas systems owned and operated by municipalities, counties, and metropolitan governments. It, too, supersedes the provisions of any charter or private act (T.C.A. §§ 7-39-401–406).

In-Lieu-of-Property-Tax Expenditure Reports by CDBG Recipients
T.C.A. § 6-54-124 requires municipalities that receive community development block grants (CDBG) and municipalities and industrial development corporations that are party to an in-lieu-of-property-tax agreement to make a report addressing the expenditures of such funds. In addition, municipalities must place a copy of the report in the main branch of their public libraries or on the Internet.

Municipal Utility In-Lieu-of-Tax Payments
Municipalities are authorized to request by resolution in-lieu-of-tax payments from any public works (T.C.A. § 7-34-115). "Public works" is defined by T.C.A. § 7-34-104(3) as water; sewer; gas or electric

[7]For a short discussion of payments in lieu of taxes by industrial development corporation lessees, see Chapter 12, "Economic Development," in this handbook.

heat, light, or power; or parking facilities. Except for municipal gas and electric plants, these payments may not exceed the amount of taxes payable on private property of a similar nature (T.C.A. § 7-34-115). Gas and electric in-lieu-of-tax payments are computed under T.C.A. § 7-39-404 and T.C.A. §§ 7-52-301, *et seq.*, respectively.

Housing Authority In-Lieu-of-Tax Payments
Housing authorities "shall agree" to pay in-lieu-of-tax payments or special assessments not to exceed the cost of services, improvements, or facilities provided (T.C.A. § 67-5-206). A similar requirement provides that nonprofit housing corporations providing low-cost housing for elderly or handicapped people must agree to make in-lieu-of-tax payments for any project exceeding 12 units occupied after January 1, 1990 (T.C.A. § 67-5-207).

Municipalities with housing authorities, except in Davidson County, may delegate to the authority by a majority vote the right to negotiate and accept payments in lieu of taxes from lessees operating property restricted under the Low Income Housing Tax Credit Program. The housing authority must submit the agreement to the local legislative bodies of affected jurisdictions for approval. Housing authorities must file reports by October 1 of each year on property owned by them that is subject to in-lieu-of-tax payments (T.C.A. § 13-20-104).

Golf Courses
If a government body leases a golf course to a private operator, the operator must make in-lieu-of-property-tax payments equal to what the *ad valorem* taxes would be if the course were private property (T.C.A. § 67-5-203(c)).

Local Taxes

Local Option Sales Tax
A municipality may levy a local sales tax, but the combined rate of the county's levy and that of the municipality may not exceed 2.75 percent. A county's levy supersedes the municipality's levy. Therefore, if the county levy is 2.75 percent, a municipality in that county may not levy a local sales tax. If the county levy is 2.25 percent, a municipality could levy an additional 0.5 percent. Regardless of the local levy amount, it must be approved by a majority vote in a referendum in the affected municipality. An ordinance calling for such a referendum may specify a period for which the tax shall be effective (T.C.A. §§ 67-6-701, *et seq.*). A statewide uniform local sales tax rate of 2.5 percent applies to intrastate telecommunications services, and a uniform local rate of 1.5 percent applies to interstate and international telecommunication services except for services to businesses that are exempt. Revenues will be used for the same purposes as other local sales tax revenues (T.C.A. § 67-6-702).

Unlike the state sales tax, the local option tax is not applied to the full purchase cost of expensive items. The local tax now applies to the first $1,600 of the purchase price. Because of this cap, the purchaser of an economy car and the buyer of a Rolls-Royce pay the same local option sales tax (T.C.A. § 67-6-702).

If a countywide local option sales tax is levied by referendum, then state law requires that half of any county levy be distributed on the same basis as the county property tax for schools (average daily attendance formula). The other half is distributed to the jurisdictions where collection took place. If it was collected in a city, it is distributed to that city. If it was collected outside the city, it is distributed to the county. However, an agreement between a county and a city may provide for a different distribution. One hundred percent of a city-only levy is general fund revenue subject to appropriation by the governing body, but it would terminate at the end of the city's current fiscal year if the county makes a levy at the same or higher rate (T.C.A. § 67-6-703, T.C.A. § 67-6-712).

The local option sales tax is a *situs* tax. That is, the geographic location where the sale is made or the service is delivered determines which jurisdiction receives the collected tax.[8] A municipality receives the tax if the transaction occurs within its corporate limits. Municipalities could enhance their revenues by verifying the *situs* code for every business located within their corporate boundaries. (For a complete discussion of how to check these codes, please see *Municipal Finance Report: A Method of Revenue Enhancement Verifying Local Option Sales Tax Distribution* by Harold Yungmeyer, The University of

[8]Provisions added to the local sales tax law to implement the Streamlined Sales Tax Agreement change the sourcing of delivered items, but these provisions do not take effect until July 1, 2009. Therefore, they have not been included here.

Tennessee Municipal Technical Advisory Service, 1989.)

For a period of 15 years, a newly annexed area or newly incorporated city gives the county the same amount of local option sales tax and wholesale beer tax it was collecting on the date of incorporation (T.C.A. § 67-6-712).

Local Wholesale Beer Tax
Wholesale beer deliveries to retail outlets in a city or county are taxed at 17 percent of wholesale prices (excluding state and federal privilege taxes levied after May 3, 1983). The tax is paid by each beer wholesaler directly to the city or county, and monthly sales reports are made to the state Department of Revenue and to each city and county. A city should check that tax payments are being received from beer wholesalers serving the area based on deliveries to all retail beer outlets in the city. An investigation by the Department of Revenue may be requested if there is doubt about administration of the tax (T.C.A. §§ 57-6-101–118). For a period of 15 years, a newly annexed area or newly incorporated city gives the county the same amount of wholesale beer tax it was collecting on the date of incorporation (T.C.A. § 57-6-103).

Local Mixed-Drink Tax
Cities that have passed a liquor-by-the-drink referendum may levy and collect a local privilege tax from businesses selling alcohol for on-premises consumption based on the schedule provided in T.C.A. § 57-4-301(b)(2).

Retail Liquor License Inspection Fees
Cities may levy inspection fees on retail liquor licensees based on wholesale liquor prices. The fees may not exceed 8 percent in counties with a population of less than 60,000 and in counties where premier tourist resort cities are located, or 5 percent in other counties. Populations are to be taken from the most recent federal census (T.C.A. § 57-3-501).

Business Taxes
The business tax is "in addition to all other privilege taxes" and is intended by the legislature to be in lieu of any other *ad valorem* tax on "inventories of merchandise held for sale or exchange" (T.C.A. § 67-4-701).

The Business Tax Act establishes five classifications of businesses that are taxable by cities at gross receipts rates ranging from one-eighth to one-sixtieth of 1 percent, in addition to a minimum tax of $15. The Tax Reform Act of 2002 (Chapter No. 856) increased these rates by 50 percent, but revenues from these increases accrue only to the state (T.C.A. §§ 67-4-708–709). A city must pay the state 15 percent of the total collected business tax under rates that existed before September 1, 2002, and 100 percent of revenues produced by the 50 percent increase in rates effected by the Tax Reform Act of 2002. An annual report must accompany the payment by June 20 for each year ending May 31. The Department of Revenue will accept quarterly or monthly installment payments (T.C.A. § 67-4-724). Transient vendors must pay a $50 minimum tax for each 14-day period of business in a municipality, but they are not subject to the percent of gross receipts portion of the tax (T.C.A. §§ 67-4-702, 709).

Any other "regulatory fee, inspection fee, or special tax or fee of any type or kind" on beer is explicitly prohibited (T.C.A. § 67-4-728).

The Department of Revenue is authorized to collect for a city, but the department’s costs of such collection are too high to make this procedure feasible (T.C.A. § 67-4-726).

The Tax Reform Act of 2002 eliminated a provision that allowed municipalities and counties to levy rates lower than those set out in state law. This act also provides that personal property tax credits, which apply to taxes that accrue to the municipality, do not apply to revenues produced by rate increases affected by the Tax Reform Act of 2002 and accruing to the state.

Businesses are required to file tax returns with the city tax collector on forms furnished by the collector. Businesses must list the gross amount of sales tax owed the state, the amount of deductions for sales tax purposes, and total gross sales. This form must be accompanied by the appropriate business tax payment (T.C.A. § 67-4-715).

Contractors who perform work outside their home jurisdictions are required to pay the business tax in the jurisdiction where the contract work is performed if they receive $50,000 or more for a job. The home jurisdiction may not impose any business tax on this same activity (T.C.A. § 67-4-708(a)).

Due and delinquent tax dates are fixed, and the Business Tax Act provides for collecting delinquent taxes using distress warrants. A municipality may hire an attorney or agent to collect delinquent business taxes but must adopt the permissive state law allowing this by a two-thirds vote of the governing body (T.C.A. §§ 67-4-714–715, 719; T.C.A. §§ 6-55-301–304). The municipal tax collector is required to collect delinquent taxes, penalties, and interest within six months of the taxes becoming delinquent, or the delinquent taxes will be audited and collected by the commissioner of revenue. The municipal tax collector, however, may collect the tax any time before the commissioner notifies the taxpayer of an audit or takes other action to collect the tax. If the commissioner collects the delinquent taxes, all the funds will be deposited with the state (T.C.A. § 67-4-719). There is a six-year statute of limitations beginning January 1 of the year in which the tax return and payment are due (T.C.A. § 67-1-1501).

Local Tourism Development Zone Business Tax
Municipalities and counties may levy a privilege tax of up to 5 percent of the sale price on goods sold in a qualified public use facility or in a tourism development zone established under the Convention Center and Tourism Development Financing Act of 1998 codified in T.C.A. §§ 7-88-101, *et seq.* Businesses exempt from the business tax also are exempt under this tax. Passage of the tax requires a two-thirds vote of the governing body at two consecutive meetings. A petition signed by 10 percent of those who voted in the municipality in the latest gubernatorial election can require that the tax be put to referendum. Revenues from the tax will be used to pay the cost of the convention center or other qualified public use facility.

Authority to levy this tax does not apply in Davidson County (T.C.A. §§ 67-4-3001, *et seq.*).

Hotel/Motel Tax
Home rule municipalities, metropolitan governments, and certain cities by private act or ordinance may levy a hotel/motel tax. For home rule municipalities, the hotel/motel tax applies to motel occupancies of fewer than 30 days (T.C.A. § 67-4-1401). The tax levied by a home rule municipality may not exceed 5 percent of the consideration charged for occupancy. It is collected when the customer is invoiced and remitted by the operator no later than the 20th of each month. Penalties and interest for delinquencies are authorized under T.C.A. § 67-4-1408, which allows home rule municipalities to use distress warrants to collect the tax.

Hotel/Motel Taxes Levied By Private Act
Municipalities that levy the tax by private act but that did not impose a hotel/motel tax by May 12, 1988, are prohibited from adopting such a tax if the county where the city is located already levies the tax. (This prohibition was removed for cities in Rutherford, Williamson, Blount, Dickson, Hardin, and Shelby counties, and for cities that have constructed a project under the Convention Center and Tourism Development Financing Act, codified as T.C.A. §§ 7-88-101, *et seq.* Because of the wording of the exemption in subsection (c) of 67-4-1425, this exemption might apply now or in the future in other counties not listed here.) If a city has already enacted the hotel/motel tax, the county may impose a hotel/motel tax only outside that city (T.C.A. § 67-4-1425).

Hotel/Motel Taxes Authorized By General Law or General Law of Local Application
Cities in certain counties exempted under subsection (c) of T.C.A. § 67-4-1425 are limited to a 5 percent rate and cities in counties incorporated under the general law may levy the tax by ordinance passed by a two-thirds vote of the governing body.

The tax levied by these cities may not exceed 5 percent of the consideration charged by the operator, and revenues from the tax by cities in Blount County must be used for tourism as defined in T.C.A. § 7-4-101(8).

Impact Fees and Adequate Facilities Taxes
Municipalities incorporated under the general law mayor-aldermanic charter have authority to levy impact fees. (See T.C.A. § 6-2-201(15)). Private acts authorize some other municipalities to levy impact fees.

Several municipalities have levied adequate facilities taxes under authority of private acts. A statute authorizing high-growth counties to levy adequate facilities taxes, however, provides that it is "the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development." T.C.A. § 67-4-2913. Since this statute authorizes only counties to levy these taxes but provides that it is the exclusive authority for "local governments," which includes municipalities, it appears that no new adequate facilities taxes may be authorized for municipalities after the effective date of the act, which was June 20, 2006.

Another complication for municipalities wishing to levy adequate facilities taxes, which are privilege taxes, is T.C.A. § 67-4-503. This section prohibits a municipality from levying a privilege tax under authority of a private act if the county in which the municipality is located has previously levied a tax by private act on the same privilege. Although this statute apparently has never been used to invalidate a privilege tax, it is still on the books and could be used.

Tax Refunds
T.C.A. § 67-1-707(b) establishes an administrative method for refunding municipal taxes collected erroneously or illegally. The claim for a refund must be made within one year of payment, or it is barred.

State Shared Taxes

State Sales Tax
The state sales and use tax is 7 percent (except for food, on which the rate is 5.5 percent), plus an additional 2.75 percent on the portion of the purchase price of single articles subject to local sales taxes from $1,600.01 through $3,200. The 0.5 percent increase adopted in 1992 is earmarked for K-12 education. The 2002 increase from 6 percent to 7 percent on nonfood items accrues to the state general fund. Cities receive 4.5925 percent of the remaining 5.5 percent state tax after deductions, including funds to support MTAS. A city's share is calculated by computing the city population as a portion of all city residents in the state (T.C.A. § 67-6-103). (For the most current per capita figure, see MTAS's annual *Hot Topic* on state revenue estimates.)

A city that elects Tennessee river resort status under T.C.A. § 67-6-103(a)(3)(F) will receive 4.5925 percent of the taxes actually collected within the city rather than its normal allocation.

T.C.A. § 67-6-221 levies a 7.5 percent sales tax on interstate telecommunications services sold to businesses. Revenues from 0.5 percent of this tax are distributed to municipalities and counties based on population and must be used for the same purposes as local sales tax revenues.

Sales Tax Holiday
Sales of clothing, school supplies, and school art supplies costing $100 or less per item and computers costing $1,500 or less per item will be exempt from state and local sales taxes beginning on the first Friday in August and lasting through the following Sunday of August 2006, and subsequent years. Municipalities are substantially held harmless for local sales tax losses (T.C.A. §§ 67-6-393, 67-6-710).

State Beer Tax
The state levies a $4.29 per barrel tax on the manufacture, sale, and transportation of beer. Cities are allocated 10.05 percent of this money on a per capita basis without regard to legal beer sales in the community. Another 10.05 percent of the revenue is allocated to counties (T.C.A. § 57-5-205). (For the most current per capita figure, see MTAS's annual *Hot Topic* on state revenue estimates.)

State Mixed-Drink Tax
In addition to a state privilege tax, the state levies a 15 percent gross receipts tax on wine and spirit sales (T.C.A. § 57-4-301(c)). The tax is earmarked for education and local government. Cities receive 25 percent of the tax collected from businesses within their boundaries (T.C.A. § 57-4-306).

Counties with a population of more than 250,000 (based on the last federal census) are required to pay 30 percent of the portion of the state tax on mixed drinks distributed to the counties to cities in their counties with a population of more than 150,000 (T.C.A. § 57-3-306(c)).

Excise Tax on Banks
Generally, the excise tax on banks is 3 percent of net earnings (excluding interest from state bonds) minus 7 percent of *ad valorem* taxes, with a complicated formula for determining a minimum tax based on a bank's capital stock. Local tax rates determine the payment allocation between the county and the city, so a city must levy a property tax to receive any funds. Another formula is prescribed for allocating such revenue if a bank has branches in more than one city and/or county (T.C.A. § 67-4-2017).

Hall Income Tax
Three-eighths of the 6 percent state tax on certain dividend and interest income paid by taxpayers is remitted by the state to the city in which the taxpayers live. Payment is made for all such taxpayers no later than the following July 31 based on taxes collected in that city in the preceding fiscal year (T.C.A. § 67-2-119).

Like the local option sales tax, the Hall income tax is a *situs* tax. Cities should check *situs* codes and file *situs* reports to assure that all revenue due to the city is actually received.

Tax Information
Certain information and data that taxpayers report to the state are open to city officials whose "official duties require such inspection or disclosure for tax administration purposes" (T.C.A. § 67-1-1704). Any person who divulges or uses this information and data for any purpose other than collecting municipal revenues may be convicted of a felony that carries a maximum $5,000 fine, up to five years imprisonment, or both (T.C.A. § 67-1-1709).

Litigation Tax – Municipal
A municipality may levy a privilege tax on litigation in all cases in municipal court. The tax must be established by ordinance or resolution and may not exceed the state litigation tax. The tax is collected upon all judgments against the defendant in municipal court (T.C.A. § 67-4-601; Op. Tenn. Atty. Gen. No. 81-598, Nov. 9, 1981; T.C.A. § 16-18-305).

Litigation Tax – State
The state litigation tax of $13.75, like the municipal litigation tax, is collected on all judgments against the defendant in municipal court. The tax applies in all civil suits and to all criminal charges, upon conviction or by order, instituted in city courts except that the tax for violation of an ordinance on using a public parking space is one dollar. When the municipal court is exercising general sessions jurisdiction, the litigation tax will be levied and collected in the same manner as a general sessions court.

City Tag or Wheel Tax
The terms "tag tax" and "wheel tax" commonly are used to describe the regulatory fee levied by some cities on motor vehicles using city streets. T.C.A. § 6-55-501 provides that "no tax (for the privilege of driving any motor vehicle upon streets) under any guise or shape shall hereafter be assessed, levied, or collected by any municipality." However, T.C.A. § 6-55-502 somewhat equivocally provides that the law shall not "abridge [a city's] right to require city automobile tags." The same section also authorizes cities to operate automobile safety lanes and inspection stations. Cities are prohibited from imposing a wheel tax on vehicle owners living outside the city (T.C.A. § 7-51-702).

State vehicle license plates must be stamped in a way that will provide space to display a municipal wheel tax sticker. This provision supersedes any local requirement respecting the display of such stickers (T.C.A. § 55-4-103(b)). A city may contract with the county clerk of the county in which it is wholly or partially located to collect its motor vehicle regulatory fees when motorists obtain their state licenses from the clerk (T.C.A. § 7-51-703).

Refuse Collection Fees
Many cities have a long history of charging for collecting garbage and other refuse. Some charge only for pickups from businesses. The Solid Waste Management Act of 1991 explicitly authorizes cities to charge solid waste disposal fees, which may be collected through electric utility bills (T.C.A. § 68-211-835). Cities that fund waste disposal by special assessment are allowed to bill homeowners on their property tax notices (T.C.A. § 67-5-103).

A municipality may not collect amounts owed for solid waste disposal charges, or make refunds of overpayments, if the payment is more than 36 months past the date the payment was first due (T.C.A. § 28-3-304).

Stormwater Management Fees
T.C.A. §§ 68-221-1101, *et seq.*, allow municipalities to levy fees for the privilege of discharging stormwater. Persons who do not discharge stormwater through the stormwater or flood control facilities of a municipality, including owners and operators of agricultural land, are exempt from stormwater fees.

Petroleum Taxes

Gas Tax

Public Acts 1997, Chapter 316, effective January 1, 1998, repealed entirely the previous laws governing petroleum taxes (the "gas tax") and replaced it with the Petroleum and Alternative Fuels Tax Law, codified at T.C.A. §§ 67-3-1201, *et seq.* The Petroleum and Alternative Fuel Tax statutes subsequently were transferred to T.C.A. §§ 67-3-101, *et seq.*That law imposes a state tax on various petroleum products sold in Tennessee. Most of the proceeds from this tax go into the state highway fund, state sinking fund, state general fund, and other state funds or programs, but the law also provides that counties and municipalities receive a share of the tax. However, tax rates and formulas for the distribution of those taxes, including the shares for counties and municipalities, cannot be determined solely from the face of the law. Those rates and formulas require extensive reference to the previous laws governing petroleum taxes and to the public acts upon which they were based, particularly Public Acts 1985, Chapters 419 and 454; Public Acts 1986, Chapter 931; and Public Acts 1989, Chapter 46.

Counties and municipalities share in the proceeds of petroleum taxes. In general, counties receive about 30 percent of the proceeds and municipalities about 15 percent. The state retains roughly 55 percent of the proceeds.

Except where specifically indicated otherwise:

- Fifty percent of the counties' shares are divided equally among the 95 counties, 25 percent on the basis of area and 25 percent on the basis of population;
- Municipalities' shares are divided based on the population each municipality bears to the aggregate population of all municipalities, according to the federal census or a special census as prescribed by T.C.A. § 54-4-203. (T.C.A. § 67-3-901(b), (c), (f)(2) and (i); T.C.A. § 67-3-905; T.C.A. § 67-3-1108; T.C.A. § 54-4-103; and T.C.A. § 54-4-204; Op. Tenn. Atty. Gen. No. 86-136); and
- The money each individual municipality receives under the Petroleum and Alternative Fuels Tax Law is paid into the municipality's state street aid fund and is required to be administered and spent under the law that governs that fund (T.C.A. § 54-4-103, T.C.A. § 54-4-204). (For an outline of what expenditures are authorized under the law governing the state street aid fund, see *State Street Aid Fund Expenditures: On the Road to Understanding*, Ron Darden, The University of Tennessee Municipal Technical Advisory Service, January 2003).

Special Privilege Tax; Export Tax

T.C.A. § 67-3-203 levies a special privilege tax of 1 cent per gallon on all petroleum products, and T.C.A. § 67-3-205 levies an export tax of one-twentieth of 1 cent per gallon on certain petroleum products exported from Tennessee. Ninety-eight percent of the proceeds from these taxes are paid into the state highway fund, and 2 percent is paid into the state general fund for administrative purposes. From the actual proceeds of those taxes, there is established a local government fund of $12,017,000. "The local government fund shall be used solely for county roads and city streets." Counties receive from this fund the monthly sum of $381,583 based on county population; municipalities receive from the fund a monthly sum of $619,833, based on municipal population[9] (T.C.A. § 67-3-2006).

Local Option Gasoline Tax for Public Transportation

T.C.A. §§ 67-3-1001, *et seq.*, authorize municipalities and counties to levy a local gasoline tax of 1 cent per gallon to fund public transportation systems, but no local government has used this authority.

[9]$10,000 per month is deducted from the municipalities' share to help support The University of Tennessee training program, which is now housed at MTAS.

Local Population Counts

Most state-shared taxes are distributed on the basis of population data certified by the Tennessee State Planning Office as of July 1 each year. A rapidly growing city may take, at its expense, three citywide censuses between federal decade counts to keep its revenue current. After the local census is certified by the State Planning Office, the new population count is used to compute state-shared revenues the following July (T.C.A. § 67-6-103(b)(3), T.C.A. § 54-4-203(b)). Special censuses that count newly annexed residents of a city are not subject to the three-per-decade limit (T.C.A. § 6-51-114). (See *Special Censuses: Ruminating About Enumerating?* by Mary Beatty and Rebecca Crowder, The University of Tennessee Municipal Technical Advisory Service, February 1994.)

Chapter Eight

Capital Funds

The Local Government Public Obligations Act of 1986 (codified in T.C.A. Title 9, Chapter 21) provides a "uniform and comprehensive statutory framework authorizing any local government to issue general obligation bonds and revenue bonds for public works projects, general obligation refunding bonds, revenue refunding bonds, bond anticipation notes, capital outlay notes, grant anticipation notes, and tax anticipation notes, and to authorize the destruction of bonds, notes, and coupons" (T.C.A. § 9-21-102). A subsequent statute repealed most of the old authorizations for local government debt scattered throughout the code (Acts of 1988, Chapter 750).

The Local Government Public Obligations Act of 1986

The Local Government Public Obligations Act of 1986 is both comprehensive and flexible. It provides relatively straightforward procedures for local governments to borrow money for almost any reasonable public purpose. In addition to the general provisions in Part 1 and Part 4, the legislation contains the following parts relevant to cities:

- Part 1: General provisions applicable to all bonds and notes issued by local governments.
- Part 2: General Obligation Bonds–When issuing general obligation bonds, a governing body pledges the "full faith and credit" of the city. Bond buyers are promised that the taxes necessary to pay off the bonds will be raised.
- Part 3: Revenue Bonds–Revenue bonds do not pledge full faith and credit of the city. They promise bond holders payment from the income of a revenue-generating facility, such as a water system, or from an earmarked revenue source, such as a city's local option sales tax.
- Part 4: General provisions governing the issuance of all notes by local governments.
- Part 5: Bond Anticipation Notes–Notes are used for shorter-term debt. Anticipation notes are issued when a city wants to delay issuing bonds until the costs of several projects can be added together into one bond issue or until the bond market changes and long-term interest rates decline.
- Part 6: Capital Outlay Notes–These notes are used to borrow money for intermediate periods of from one to 12 years.
- Part 7: Grant Anticipation Notes–Some federal grants require a city to spend its own money to carry out a project, then apply for reimbursement. These notes allow the city to borrow funds for the front-end costs.
- Part 8: Tax Anticipation Notes–Some jurisdictions that do not maintain adequate reserves have to borrow operating funds each year to get through the lean months before annual property tax payments are received.
- Part 9: Refunding Bonds–Sometimes cities have to sell bonds when interest rates are high. If rates drop significantly a few years after the bonds are sold, refunding procedures allow the community to issue new bonds at the lower interest rate and use money borrowed with the new bonds to pay off the old, high-interest debt.

Debt Limit

There is no debt limit under the act. "Bonds or notes may be issued under this chapter notwithstanding and without regard to any limit on indebtedness provided by law" (T.C.A. § 9-21-103).

Allowable Projects[10]

The definition section of the act has a long list of allowable public works projects, including everything from abattoirs to zoos. The list and the accompanying catchall provisions should cover most projects a community may want to fund (T.C.A. § 9-21-105(21)).

If a city has used available funds to start a public works project, a bond issue may include money to replace those funds (T.C.A. § 9-21-109).

[10]For requirements and procedures for issuing bonds for business and industrial parks, including the requirement for a certificate of public purpose and necessity, see Chapter 12 on Economic Development.

Powers of Local Governments
The act includes a comprehensive list of local government powers to issue debt, use the borrowed money, and pay the obligation. Cities are authorized to undertake bond-funded projects with other local governments and with the state or federal governments. They may build projects up to 20 miles outside the city limits. They may levy taxes on only a portion of the city to finance a project that benefits only that portion of the community. They may establish fees, tolls, or other charges and promise their bondholders that the revenue will be earmarked to pay off the debt. The act also includes authority to lease public works projects. Cities may use this authority to structure public/private partnership agreements (T.C.A. §§ 9-21-107, 214).

Limitations on Local Governments
The act provides that "no local government shall engage in the construction of a public works project wholly or partly within the legal boundaries of another local government except with the consent of the governing body of the other local government" (T.C.A. § 9-21-107(1)).

Process for Issuing Debt[11]

General Filing Requirements
Within 45 days following the issuance or execution of a finance transaction, the city must submit a report to the municipal governing body and to the state director of local finance in the comptroller's office. This report must include:

- A brief description of the transaction;
- The issuance and continuing costs of the transaction;
- A copy of the IRS information return, if applicable;
- A description of any continuing disclosure obligations;
- A copy of the offering document, if any; and
- Other information required by the funding board.

When a municipality discovers a failure to file as required above or an error in a filing, it may seek permission from the director of local finance to do a late filing. The director may order a late filing upon discovery of noncompliance. The municipality must file the required information within 15 days.

The funding board may exempt from these disclosure requirements de minimus transactions, transactions in which the municipality is required to participate in a financing program, a transaction that is a conduit for a nongovernmental entity, and transactions in which cost disclosure is inconsistent with the intent of this law (T.C.A. § 9-21-151).

General Obligation Bonds
The city council adopts an initial bond resolution stating:

- The maximum dollar amount of bonds to be issued;
- The project for which the bonds are to be issued;
- The maximum interest rate the bonds will be allowed to bear; and
- A statement of revenues to be used to pay the bonds (T.C.A. § 9-21-205).

The resolution may be adopted at a regular or a special meeting with only a majority vote. It takes effect immediately upon adoption and is not subject to veto (T.C.A. § 9-21-108).

The city publishes the resolution with a notice advising the community that if 10 percent of the registered voters present a petition calling for a referendum within 20 days, an election will be held to authorize the bonds (T.C.A. § 9-21-206). If a petition is presented to force a referendum, the bonds may not be issued unless a majority of voters approve the issue. However, there is one exception: If three-fourths of the governing body votes that an emergency requires issuing general obligation bonds for water or sewer purposes, then a petition may not force a referendum (T.C.A. § 9-21-207).

The city council may act on its own to hold an election to determine if the voters want to issue general obligation bonds for a project (T.C.A. § 9-21-208). The code establishes procedures for holding bond

[11]See also the comptroller's publication *Guide for the Issuance of Notes by the Counties, Consolidated Governments, and Municipalities of Tennessee* by the Division of Local Finance. This publication can be found at www.comptroller.state.tn.us/lf/guide2003.pdf

elections. If an issue is not approved by the voters, then the city must wait at least three months before raising the proposition again (T.C.A. §§ 9-21-209–212).

In the process for the bond sale, the city prepares an official statement, which serves as a sales brochure for the debt issue and which normally is prepared with a financial adviser's help. The city decides whether it wants to pay one of the national rating agencies, such as Moody's or Standard & Poor's, to issue a rating for the bonds and whether it wants to purchase bond insurance to further assure lenders that their money will be repaid.

The city adopts a final bond resolution authorizing the sale and a tax resolution affirming that annual taxes will be levied to pay bond principal and interest (T.C.A. § 9-21-215). To assure potential lenders that all legal requirements have been met, cities employ lawyers who specialize in bond issues (bond counsel) to prepare resolutions and other legal documents associated with the issue.

The city advertises the bond issue five days before the sale date either in a financial newspaper having national circulation or by electronic communication system generally available to the financial community. If the bond issue is for $5 million or less, the sale must be advertised as provided above or in a newspaper having general circulation in the municipality (T.C.A. § 9-21-203).

General obligation bonds are sold by competitive bid (T.C.A. § 9-21-203). Bonds may be issued for up to 40 years, but the length of the issue may not "exceed the reasonably expected economic life of the project being financed" (T.C.A. § 9-21-213(a)). General obligation bonds must be sold for at least 98 percent of the face value of the indebtedness, known as "par" (T.C.A. § 9-21-202).

Revenue Bonds

Issuing revenue bonds is similar to issuing general obligation bonds, but there are no general law provisions for petitioners to force a referendum on revenue bonds. They may be sold by bid or negotiation for at least 97 percent of par value (T.C.A. §§ 9-21-302–303).

Lenders providing money through revenue bonds must look for repayment to the revenue produced by the public works being financed. Therefore, revenue bond covenants frequently include detailed promises about how the city will operate its revenue-generating investment and handle its finances. Cities have the authority to make covenants about insuring and maintaining a public works project, keeping city books, performing audits, and many other operational details. There may be interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings, and other interest rate hedging agreements relative to revenue bonds (T.C.A. § 9-21-306).

Notes

Bond anticipation notes may be issued for no more than two years from the date of issue. The state director of local finance must approve the issue and may approve two extensions of two years each for a six-year total. During such an extension period, the city has to begin retiring the debt (T.C.A. §§ 9-21-501, *et seq.*).

Capital outlay notes also must be approved by the director of local finance. Several time frame options are available, including three-year notes with two three-year renewal periods, 10-year notes for purchasing land, and 12-year notes. Twelve-year capital outlay notes totaling less than $2 million must be sold at a competitive public sale or by an informal bid process. Twelve-year capital outlay notes totaling more than $2 million must be sold at a competitive sale (T.C.A. §§ 9-21-601, *et seq.*).

Grant anticipation notes may be issued for various public works projects. They are secured only by the pledge of grant funds under contract between the federal or state government and the city. However, the interest on such grant anticipation notes may be a general obligation of the city. Grant anticipation notes may be issued for three years or for seven years with the approval of the state director of local finance. Under certain conditions, they may be extended to 10 years (T.C.A. §§ 9-21-701, *et seq.*).

Tax anticipation notes for up to 60 percent of a city's total appropriations for a current fiscal year are authorized subject to prior approval by the state director of local finance. These must be paid by the end of the fiscal year. If this is not possible, application for permission to issue funding bonds must be made to the state director "within 10 days prior to the close of the fiscal year" (T.C.A. §§ 9-21-801–803).

"Any note or promise to repay money issued ... contrary to the requirements of Chapter 21 ... shall not constitute a legal obligation of the local government and shall be subject to the restrictions and penalties of T.C.A. § 9-21-406." A lender holding such an invalid note may not collect interest on it until the act's requirements have been met and the obligation approved by the state director of local finance (T.C.A. § 9-21-406).

To assure that no Tennessee local government slips into the habit of borrowing funds to pay annual operating expenses, any city issuing notes is required to send a balanced annual budget to the state director of local finance. If the director finds that the city is using unrealistic projections in its budget, he or she may require the governing body to adjust its estimates or increase its tax levy (T.C.A. § 9-21-403).

Before notes may be issued to finance industrial parks, a city must obtain a certificate of public purpose and necessity from the Building Finance Committee in the Industrial Development Division of the Department of Economic and Community Development (T.C.A. § 9-21-402, T.C.A. § 13-16-207).

Refunding Bonds
Before issuing refunding bonds for either outstanding general obligation bonds or outstanding revenue bonds, the city's refunding plan must be submitted to the state director of local finance (T.C.A. §§ 9-21-901, *et seq.*, T.C.A. §§ 9-21-1001, *et seq.*).

Utility Bond Law

The Revenue Bond Law of 1935 allows issuing bonds secured by revenues to acquire, construct, reconstruct, improve, or extend parking facilities, water, sewer, gas, or electric systems within or without a city's corporate limits. No referendum is required, only approval by "a majority of all members [of the governing body] then in office." The maximum term is 40 years, and there is no interest rate ceiling. Revenue anticipation notes with terms of up to five years and refunding bonds also are authorized (T.C.A. §§ 7-34-101–118).

Cash Basis Law of 1937

The Cash Basis Law of 1937 is another old bond law that has not been repealed. The law was enacted to help cities and counties cope with serious financial problems brought on by the Great Depression of the 1930s. It may be used to:

- Fund notes, warrants, or other debts not secured by bonds;
- Refund any existing bonds and accrued interest thereon; and
- Pay bond redemption premiums and other expenses deemed necessary by the governing body.

The governing body is specifically empowered to take final action at one meeting (one reading only) "notwithstanding the provisions of any public or private statute."

The bond order must include a pledge to levy property taxes sufficient to retire the bonds. It becomes effective on passage by the governing body. Publication of the bond order in a newspaper published in the city or county "once in each of two consecutive weeks" is required. Maximum terms are 20 years for funding bonds and 30 years for refunding bonds, but the state director of local finance may extend these terms by 10 years. Registered bonds are authorized as to principal only or as to principal and interest. No maximum interest rate is specified.

Prior approval of the state director of local finance is required for issuing bonds under this law; therefore, a detailed financial report must be prepared (T.C.A. § 9-11-108). As long as any bonds issued under this law are outstanding, complete annual budgets for all city or county operations must be submitted to the state director of local finance at least three weeks before adoption. Each annual budget must have the director's approval before adoption. Bonds or notes issued under this statute are exempt from any other public or private law provisions (T.C.A. §§ 9-11-101, *et seq.*).

Some cities used this law as they wrestled with serious debt problems, and a general belief prevailed that it would bring lower interest rates because of the state director's oversight and prior approval requirements. In the mid-1950s, at least 16 cities were subject to the law. As time passed, such bonds

were retired. Cities continued using the law because of less financial pressure and the subordination of budget power to the state director of local finance. By 1987, no cities were under this law.

Registering Bonds
Procedures and requirements for registering bonds and other public obligations following the federal requirement that all municipal securities must be registered after July 1, 1983, are contained in T.C.A. §§ 9-19-101, *et seq.*, and T.C.A. § 9-21-111.

Special Assessments

Cities frequently receive requests from neighborhoods for drainage projects, street improvements, or other public works construction that benefit only the requesting neighborhood. Instead of spending citywide funds for the project, the city may use a special assessment process in which the benefitting property owners pay part or all of the improvement costs. The state code provides two separate, yet similar, procedures for establishing special assessments, and some city charters include a local procedure.

Establishing Special Assessments: Procedure Number One
Any city, unless its private act charter provides otherwise, may use special assessments to pay for constructing or improving streets, alleys, or other public places. Assessments are calculated according to the frontage of the abutting lot or parcel to the street, alley, or other public place (front-foot basis). The improvement district is created by ordinance following a public hearing. Two-thirds of the project cost is paid by the neighborhood, and one-third is paid by the city. No property owner has to pay an assessment of more than 50 percent of the market value of his or her lot and the improvements.

If the owners of at least 75 percent of the front-footage in the benefitting neighborhood wish to relieve the city from bearing its burden to contribute toward the cost of the improvement, they may state in the petition their desire to pay 100 percent of the cost. However, in this event, the maximum assessment is still one-half of the assessed value of each lot.

T.C.A. § 7-32-101(b) allows municipalities to make special assessments for flood control and water management against owners of property in a benefitted flood plain. The municipality must assess at least two-thirds of the cost not paid by federal funds to the benefitted owners.

The assessment becomes a lien against the property. Property owners may pay the assessment over five years at 6 percent interest (T.C.A. §§ 7-32-101, *et seq.*). Cities may borrow money under the Local Government Public Obligations Act of 1986 to pay for the improvements (T.C.A. §§ 7-33-101, *et seq.*, T.C.A. § 7-33-201).

A municipality may acquire streets, sidewalks, utilities and related improvements, parking facilities, parks, and greenways from private entities when the municipality reasonably believes there will be private investment of at least $25,000,000 on property adjacent to the facility (T.C.A. § 7-32-101). A municipality accepting public facilities under this statute may issue revenue bonds to finance the purchase. The authority to issue revenue bonds also may be delegated to the industrial development corporation or the public building authority (T.C.A. § 7-33-121).

Establishing Special Assessments: Procedure Number Two
Under this alternative procedure, cities may authorize special assessments for streets, sidewalks, and other public ways, including storm drains, sanitary sewers, and the undergrounding of overhead utility cables, including streetscape improvements.

Charges for the improvements are allocated to property owners based on assessed values of their benefitted properties instead of on a front-foot basis. The full cost of the project may be charged to the property owners if the city pledges the full faith and credit of the municipality to satisfy any deficiency in collections. Otherwise, 75 percent of the cost may be charged (T.C.A. §§ 7-33-301, *et seq.*).

Churches and other tax-exempt properties, except church-owned property in premier tourist resort cities, are charged an assessment, but undeveloped areas may not be charged (T.C.A. § 7-33-310). The law, somewhat ambiguously, seems to require the governing body to act if the owners of 51 percent of the total assessed value of the property to be benefitted petition for an improvement (T.C.A. § 7-33-303).

Public Building Authority

Any city and/or county may establish a public building authority (PBA). The authority is a public, nonprofit corporation that can build and operate buildings used by one government, several governments, government organizations, and private businesses that lease space in such buildings. The authority's powers include any undertaking that can be financed by bonds, other municipal obligations, the state, or any agency that enters into an agreement with the authority (T.C.A. §§ 12-10-101, *et seq.*).

The authority may issue revenue bonds to raise money to construct a building. Revenue from long-term leases of the space may pay the bonds. If the bonds or notes are issued in registered form, they must meet requirements established by the Tennessee Public Obligations Registration Act (T.C.A. §§ 9-19-101, *et seq.*).

Any municipality may, by resolution, enter into leases, loan agreements, sales contracts, or operating agreements or contracts for financing certain projects. Such leases, loan agreements, sales contracts, or operating contracts with an authority are payable only from revenues from one or more city projects. After a city makes a commitment to lease space in an authority's building, it must make the necessary tax levies to meet the lease's payment terms, including the project's operating and maintenance expenses. Such a tax must be by resolution and is in addition to other taxes authorized by charter. Cities with taxing power that enter into any lease, loan agreement, or sales contract with a public building authority must comply with the same resolution, notice, and election provisions the municipality must comply with in issuing general obligation bonds unless the lease, loan agreement, or sales contract retires or refunds existing debt (T.C.A. §§ 12-10-101, *et seq.*).

T.C.A. § 12-10-124(c) requires PBAs to advertise publicly and receive competitive bids for the construction of buildings or improvements costing more than $10,000 but less than $1 million. For buildings or improvements costing $1 million or more, the authority must use public advertisement or competitive sealed bids, a request for proposals with minimum required qualifications, or a request for qualifications, including minimum qualification requirements, in which multiple proposers are selected and prequalified to submit bids.

Municipalities, counties, and metropolitan governments may invest loan proceeds from public building authorities in guaranteed investment contracts chosen or established by the authority under restrictions set out in T.C.A. § 12-10-111.

Wastewater Facility Grants and Loans

T.C.A. § Title 68, Chapter 221, contains three different parts dealing with grants and loans for wastewater facilities:

- Part 2 authorizes loans called "repayable grants";
- Part 8 authorizes wastewater treatment works construction grants; and
- Part 10 authorizes loans from a revolving loan fund. These loans also are available to intergovernmental entities created by cooperating local governments, such as water or wastewater authorities.

Although the state puts in some money, the vast majority of nonlocal funds for wastewater projects come from the federal government and have been allocated through the state. In the past, significant grant funds were available. With few exceptions, only loans are available now.

Repayable Grants

To provide these loans, a procedure for issuing state bonds is outlined in T.C.A. §§ 68-221-201, *et seq.* A city receiving a loan agrees to a repayment schedule in a contract with the state and establishes sewer user fees to produce revenues to pay the debt service.

This statute also includes authority to:

- Require sewer connections wherever service is available;
- Refuse water service if such connections are not made;
- Impose connection charges; and
- Levy other charges necessary to raise funds for sewer system operations and maintenance.

Increases in the sewer user fee may not take place automatically when base water charges are increased. They must be separately adjudged reasonable and justified (T.C.A. §§ 68-221-201–212).

To assure that the state gets its money back, the loans may be given only to cities receiving state-shared revenue. The annual loan payment may not exceed twice the unobligated state-shared taxes the city receives (T.C.A. § 68-221-202).

Construction Grants
The Wastewater Treatment Works Construction Grant Act of 1984 provides grants to cities for constructing wastewater treatment works. Grants are allocated according to a statewide priority list maintained by the Department of Environment and Conservation.

Grants are for 55 percent of the eligible portion of the project. If innovative technology is used, grants are for 75 percent. The funds may be used for preliminary engineering and as matching funds for federal EPA grants. Municipalities receiving grants must maintain user rates that will fund operation, maintenance, principal and interest obligations, as well as an adequate depreciation account (T.C.A. §§ 68-221-801, *et seq.*).

Revolving Loan Fund
The purpose of the Wastewater Facilities Act of 1987 is "to provide local governments in Tennessee with low-cost financial assistance relative to necessary wastewater facilities through the creation of a self-sustaining revolving loan program."

The loan program is administered jointly by the Tennessee Department of Environment and Conservation and the Tennessee Local Development Authority. Cities in the "lower economic scale" may receive loans at lower interest rates than other jurisdictions. Cities receiving loans must agree to adjust their sewer fees periodically so that loan payments and operating costs may be "timely paid." They also must certify their compliance with an operating plan for their facility that has been approved by the Tennessee Department of Environment and Conservation. The plan must address the quality, compensation, and number of wastewater facility employees during the life of the loan. These loans also are available to intergovernmental entities created by cooperating local governments, such as wastewater authorities (T.C.A. §§ 68-221-1001, *et seq.*).

Water Facility Loans

State loans funded by state bonds may be made to cities for constructing waterworks under the Waterworks Construction Loan Act of 1974. The provisions of the act are almost identical to those of the repayable grants for sewer construction already described. Water facility loans are administered by the Department of Environment and Conservation, which is given authority to issue necessary rules and regulations and to enter into agreements with cities with respect to such loans (T.C.A. §§ 68-221-501, *et seq.*).

Drinking Water State Revolving Fund
T.C.A. §§ 68-211-1201, *et seq.*, do the following:

- Create a Drinking Water State Revolving Fund in the state treasury;
- Provide for loans from the fund to water systems;
- Establish that water systems serving areas in the lower economic scale are eligible for lower interest rates on loans;
- Give priority to projects that address the most severe health problems;
- Provide for affordability criteria for loans based primarily on an area’s per capita income and property values;
- Place certain restrictions on using revolving funds, including changes in the system’s method of operation;
- Require the water system obtaining the loan to establish dedicated revenue sources to repay the loan, periodically adjust fees and charges, and maintain financial records in accordance with governmental accounting standards;
- Provide that the loans may be interest free; and
- Under certain conditions, allow extended terms for loans to disadvantaged communities.

T.C.A. §§ 68-221-1007–1015 place water systems under the wastewater financing board's jurisdiction. Loans under this program also are available to entities created by cooperating local governments, such as water authorities.

Miscellaneous

Housing Authority
Local housing authorities are authorized to purchase mortgages and make mortgage loans to nonprofit entities or corporations. To fund these undertakings, housing authorities may sell bonds by public or private sale. A maximum interest rate is not fixed (T.C.A. §§ 13-20-104, 602). An industrial development corporation is empowered to provide multifamily housing facilities to be occupied by elderly, handicapped, or low- or moderate-income people (T.C.A. § 7-53-101(11)(A)(x)).

T.C.A. § 13-20-408 prescribes the appointment of a board of commissioners to govern the housing authority. Where the housing authority contains 300 or more units, at least one housing authority commissioner must be a resident of public housing. The resident must be appointed to the first vacancy on the board that occurs after May 24, 2000.

Housing authority security officers have the same powers as law enforcement officers if they meet the same qualifications and training required of full-time police officers. However, security officers may make arrests only when offenses are committed on housing authority property (T.C.A. § 13-20-419).

Local Development Authority
The Tennessee Local Development Authority was created in 1978 as a central state agency to handle a variety of state loans to city governments and other public entities.

The governor chairs the authority. Its members include the secretary of state, state treasurer, comptroller, commissioner of finance and administration, an appointee by the speaker of the Senate chosen from three people nominated by the Tennessee County Services Association, and an appointee by the speaker of the House of Representatives from three people nominated by the Tennessee Municipal League.

The authority may make loans to counties, cities, metropolitan governments, and special districts to finance construction of sewage treatment facilities, waterworks, correctional facilities, and resource and energy recovery facilities. Although prior legislation authorizing other means of financing some of these projects has not been repealed, the legislature declared that this program should be used preferentially. The loan agreements are made between the Department of Environment and Conservation and the local governmental unit (T.C.A. §§ 4-31-101, *et seq.*).

Economic Development
See Chapter 12, "Economic Development," for a discussion of capital funding for industrial parks, downtown redevelopment, and other economic development projects.

Unfunded Pension Obligations
Any local government may issue general obligation bonds for certain unfunded pension obligations if the state director of local finance recommends the issuance and the state funding board approves it. "Certain unfunded pension obligations" means pension benefits for local government employees whose jobs resulted from the local government taking over another local government's responsibilities (T.C.A. § 9-21-127).

Zone Academy Projects
Counties, municipalities, and special school districts are authorized to borrow funds from the Tennessee School Bond Authority for "qualified zone academy projects." These projects are buildings, structures, improvements, or equipment for schools, and the county is not required to share the proceeds of the loan with the city school system (T.C.A. §§ 49-3-1201, *et seq.*).

Restoration of Historic Theaters
T.C.A. § 67-4-409(j)(2)(A) allows funds in the state land acquisition fund to be used to restore historic theaters owned by municipalities that are listed on the National Register of Historic Places.

Chapter Nine

Fiscal Administration

Fiscal Administration in General

Most municipal charters contain some provisions about fiscal administration. However, some general laws have been enacted in this area. If these laws are more restrictive or comprehensive, they take precedence over charter provisions. For example, the general law requiring annual audits supersedes a private act requiring only biennial audits.

Budget, Appropriations, Publication Requirements
The Municipal Budget Law of 1982 applies to municipalities that do not have budget provisions in their charters requiring detailed estimates of proposed expenditures, expenditures for the preceding fiscal year, reasons for recommended departures, and estimates of anticipated revenue from all sources with comparative statements for the past, present, and next fiscal year.

Cities operating under general law charters and cities that do not have charter budget requirements, at least as detailed as the Municipal Budget Law of 1982 (T.C.A. §§ 6-56-201, *et seq.*), must publish their annual operating budget, comparisons of the proposed budget with the actual budget for the prior year, and estimated expenditures for the current year. This must include:

- Revenues and expenditures for the general, public works, general purpose school, and debt service funds;
- Revenue sources for each fund broken down by local, state, federal, and other sources;
- Expenditures for each fund listed separately by salaries and other costs;
- Beginning and ending fund balances for each fund; and
- The number of full-time equivalent employee positions for each fund.

Publication must be in a newspaper of general circulation not fewer than 10 days before the meeting at which the governing body will consider final passage of the budget.

Biennial Budgets
A municipality may propose and adopt a biennial budget for any departments approved by the director of local finance (T.C.A. § 4-3-305).

Appropriated Funds Required
A general law provides that "no person shall be entitled to have made available to them or otherwise be entitled to any program or any services ... unless funds remain available for such program or service from monies appropriated for that purpose by ... the appropriate governing body of a political subdivision" (T.C.A. § 9-1-116). There are no exceptions to the rule that public funds in Tennessee may not be spent until a governing body has appropriated them.

Appropriations to Civic, Charitable, and Educational Organizations
Cities may make appropriations to charitable organizations and nonprofit civic organizations (organizations operating under 501(c)(4) or 501(c)(6) of the Internal Revenue Code), such as chambers of commerce and industrial promotion agencies. The city must prescribe guidelines directing how agencies may use the money. The agencies must submit an annual report and audit to the city. Advance newspaper notice is required for an appropriation to a nonprofit civic organization. Also, the state comptroller is required to issue regulations governing such appropriations (T.C.A. § 6-54-111).

Municipalities are specifically authorized to donate public funds to public or tax-supported colleges and universities and even levy taxes for such donations (T.C.A. § 49-7-108).

T.C.A. § 12-8-103 authorizes counties and cities to work gratuitously for charitable, nonprofit organizations, including churches and schools. However, the validity of this statute is doubtful.

The Tennessee Fire Service and Code Enforcement Academy may accept donations of property, services, and money from any public agency (T.C.A. § 68-102-205).

Loans to Other Entities
Cities may contract to make loans, grants, donations, and reimbursements to utility districts and other local governments for constructing public works (T.C.A. § 9-21-107).

Certified Municipal Finance Officer Required
The Municipal Finance Officer Certification and Education Act of 2007 requires each municipality to have in its employ at least one certified municipal finance officer (CMFO), who can be the recorder, director of finance, city clerk, or other official with financial oversight responsibility, in accordance with this schedule based upon gross revenues for all funds in the July 1, 2006, to June 30, 2007, fiscal year, including utilities:

GROSS REVENUES	COMPLIANCE DATE
$10 million or more	January 1, 2011
$5 million to $9,999,999.99	January 1, 2012
Less than $5 million	January 1, 2013

Any municipality with $300,000 or less in gross revenues and $300,000 or less in total debt in the immediately preceding fiscal year may contract with a certified municipal finance officer or qualified individual for financial oversight rather than employ a CMFO.

A municipality with $100,000 or less in gross revenues for all funds, including utilities but excluding one-time, nonrecurring grants, and with debt totaling $100,000 or less in the immediately preceding fiscal year may employ an individual who has earned at least 24 hours of continuing education units of financial education for the calendar year. The municipality may employ this person instead of a CMFO or contract with a CMFO or qualified individual who is exempt from CMFO certification. A municipality with deficit total net assets or a negative change in net assets for three consecutive years, or that is in default on any indebtedness, however, is deemed financially distressed and is required to employ a CMFO or contract with a CMFO or a qualified individual who is exempt from CMFO certification.

MTAS, in conjunction with the comptroller, will develop the curriculum and provide the training and testing leading to the CMFO designation. The program must include at least 80 hours of course and lab work in government environment, auditing and internal controls, government accounting, budgeting, debt administration, cash and investment management, strategic planning and capital improvement plans, pensions and benefits administration and risk management, and procurement and enterprise resource planning systems.

A candidate must be at least 18 years of age and a high school graduate or the equivalent to apply for the CMFO designation. Each candidate must demonstrate proficiency in the subject matter for each course to receive the designation. A candidate may choose to take the examination before taking the course except for the course on government environment, which is mandatory.

To maintain certification, a CMFO must earn at least 24 continuing education units (CEUs) per year. Up to 24 CEUs may be carried over per year.

The following individuals are exempt from the requirements leading to the CMFO designation, but must comply with continuing educational requirements:

1. An individual designated as a certified government finance manager (CGFM) by the Association of Government Accountants.
2. An individual designated as a certified public finance officer (CPFO) by the Government Finance Officers Association.
3. An individual licensed as a certified public accountant (CPA) by the state board of accountancy and in active status and who has a minimum of five years of primarily governmental experience with at least three of those years in Tennessee.

These individuals must send proof of exemption to the comptroller.

When the compliance date has passed and the municipality must hire a person required to have the CMFO designation, the person hired must be exempt or must achieve the designation within two years of being hired.

A municipality that contumaciously refuses to comply with the requirement that it have a CMFO in its employ is subject to a civil penalty of up to $50 per day during the continuance of the violation, to be levied by the comptroller (T.C.A. §§ 6-56-401, *et seq.*).

Accounting System

T.C.A. § 9-2-102 requires the department of audit "... to prescribe a uniform system of bookkeeping ... in all state, county, and municipal offices." The uniform system for municipalities is prescribed in the *Internal Control and Compliance Manual for Tennessee Municipalities* (Comptroller of the Treasury, Division of Municipal Audit, April 1995, available on the comptroller's Web site). The manual itself declares that it must be used in conjunction with Chapters 1 through 12 of the Government Finance Officers Association's 2005 publication *Governmental Accounting, Auditing, and Financial Reporting*, commonly known as the "Blue Book." Together, these publications supersede the *Uniform Accounting Manual for Tennessee Municipalities*. However, the comptroller also may approve any "existing system, with the concurrence of the commissioner of Finance and Administration."

Electronic Business Systems
The Uniform Electronic Transactions Act, T.C.A. §§ 47-10-101, *et seq.*, authorizes public officials, including those of municipalities and utility districts, to conduct business transactions by electronic means. Public officials may determine whether and to what extent they will send, accept, and rely on electronic records and electronic signatures.

Any municipal official who decides to implement an electronic business system that provides for sending and receiving electronic records that contain electronic signatures or authorizations must file a statement with the comptroller of the treasury at least 30 days before offering the service. The statement must contain:

- A description of the computer hardware and software to be used;
- A description of policies and procedures related to implementation of the system;
- Documentation of the internal controls that will ensure the system's integrity;
- A description of the public official's personnel who will be responsible for implementing the system;
- A description of the types of records and transactions to be electronically communicated, as well as a description of the transaction and record authorization process, including a description of any electronic signature to be used;
- Estimated cost of the system, including development and implementation costs; and
- The expected benefits and estimated cost savings, if any, of conducting business by electronic means.

Within 12 to 18 months after implementation of an electronic business system, a municipal official must provide a post-implementation review to the comptroller of the treasury. This review must contain:

- An assessment of the system by the official;
- Responses from a survey of users of the system; and
- Any recommendations for improvements to the system.

See Chapter 5 for open record implications of this statute.

Receipt and Investment of Funds

Receipt of Funds
Municipalities are authorized to accept checks, money orders, credit cards, and debit cards for taxes, licenses, fines, fees, and other money collected by the municipality (T.C.A. § 9-1-108(a) and (c)(1)). If payment is made by check and it is returned for any reason, the municipality may impose a penalty of $20 or 1 percent of the amount of the check over $2,000 (T.C.A. § 9-1-109). If payment is made by a credit card or debit card, the municipality may collect a processing fee in an amount equal to the amount paid to the third party that processes the payment. This fee shall not exceed 5 percent of the amount of the payment. If payment is made by a credit card that is not honored by the credit card company, the municipality may collect a service charge equal to that charged for a check that is returned for insufficient funds. This charge shall not apply if an electronic device is used to conduct the credit card transaction and the card and cardholder are present when the municipal officer conducting the transaction learns that the

credit card will not be honored. The municipal officer collecting funds through payment by a credit card or debit card shall state on any notice to the person owing the tax, fine, fee, etc., either the percentage of the processing fee or the actual fee imposed for the use of a credit card or debit card (T.C.A. § 9-1-108(c)(2)-(6)).

Investment (Deposit) of Municipal Funds

Funds temporarily not needed may be invested in a wide range of securities, including:

- U.S. Treasury bills and notes;
- Nonconvertible securities of federal government-sponsored enterprises chartered by the U.S. Congress, such as the Federal National Mortgage Association;
- Secured certificates of deposit at state and federal chartered banks and savings and loan associations;
- Repurchase agreements of federal agency securities under procedures established by the state funding board if approved by the director of local finance;
- Top-rated state and local government general obligation bonds–investment of proceeds of notes and bonds (T.C.A. § 6-56-106);
- TVA obligations (T.C.A. § 35-3-119);
- Public housing authority obligations (T.C.A. § 35-3-115);
- Industrial building bonds (T.C.A. § 7-55-114);
- Industrial development corporation bonds (T.C.A. § 7-53-309); and
- Water treatment authorities (T.C.A. § 68-221-611(h)).

Most investments are limited to a maximum of four-year maturities unless approved by the director of local finance (T.C.A. § 6-56-106).

Investments in nonconvertible debt securities of federal issuers, repurchase agreements, and prime bankers' acceptances and commercial paper must be authorized by ordinance. The governing body also must adopt a written investment policy to govern these investments. The policy must be at least as strict as that of the state funding board (T.C.A. § 6-56-106(a)).

Municipalities also may invest in cash management accounts to preserve FDIC protection (T.C.A. § 9-1-118).

Investment Pool

An investment pool, administered by the state treasurer, is available for investing a local government's idle public funds. Local funds are consolidated with state funds, but accurate and detailed accounting records are maintained for each local government. The cost of the service is deducted from that government's pro rata earnings (T.C.A. §§ 6-56-106 and 9-4-701–706).

Collateral

All cities may invest or deposit funds in state or federal savings and loan associations, providing certain collateral requirements are met for investments exceeding the $100,000 insured by federal bank insurance programs (T.C.A. § 9-1-107). Funds in banks also must be collateralized (T.C.A. § 6-56-106), and the collateral must have a market value equal to 105 percent of the government funds it secures (T.C.A. § 9-4-105).

Collateral Pool

The Collateral Pool for Public Deposits Act of 1990 creates a system whereby any bank or savings institution designated as a qualified public depository guarantees public depositors against loss caused by the default or insolvency of other qualified banks or public depositories in the same pool. The act created the collateral pool board, which is responsible for administering the system (T.C.A. §§ 9-4-501, *et seq.*).

The average monthly balance of public funds in a depository participating in the collateral pool may not exceed 110 percent of the average daily balance of public funds in the depository.

Miscellaneous

Audits
Each municipality's governing body is responsible for obtaining annual audits of "all departments, boards, and agencies under its jurisdiction that receive and disburse funds ... [including] general funds, highway funds, school funds, and public utilities." The audit must be completed "as soon as practicable after the end of the fiscal year" (T.C.A. § 6-56-101).

Copies of the audit must be furnished to the mayor, the "chief executive officer," each member of the governing body, and the comptroller and "shall also be made available to the press" (T.C.A. § 6-56-105). A copy is required to be placed in the main branch of the municipality's public library and also may be posted on the Internet (T.C.A. § 6-56-104).

Such audits must meet minimum standards prescribed by the state comptroller and shall be approved by that office. The audits may be made by certified public accountants, public accountants, or auditors from the comptroller's office. If a city fails to have an audit, the comptroller may require one at the city's expense (T.C.A. § 6-56-105).

The Department of Audit in the comptroller's office may establish minimum standards for audits by the internal audit staffs of local governments. The department also may require all such audits to contain a statement of compliance with those standards (T.C.A. § 4-3-304(9)).

Comptroller Fees
T.C.A. § 8-4-108 allows the comptroller to charge administrative fees for services requested by and provided to municipalities and other local governments.

Compliance with GASB
Municipalities must comply with standards established by the Governmental Accounting Standards Board (GASB). Failure to do so may result in more oversight of the municipality's finances by the state comptroller and possible loss of economic development grants and some state-shared revenues (T.C.A. §§ 9-3-401, *et seq.*).

Reporting of Taking of Public Monies
Any public official with a reasonable belief that a theft, forgery, credit card fraud, or other act of unlawfully taking public money, property, or services has occurred must report this to the state comptroller. The official is granted civil and criminal immunity for making the report unless the official benefitted from the act (T.C.A. §§ 8-4-503, 504).

Chapter Ten

Purchasing[12]

Municipal Purchasing Law of 1983

The Municipal Purchasing Law of 1983 establishes minimum requirements for all cities that do not have very specific charter provisions governing competitive bidding and purchasing.

Municipalities that have charter provisions dealing with competitive bidding and either establishing bid limits in the charter itself or allowing bid limits to be set by ordinance but setting a maximum may continue to operate under the charter provisions, but the municipality must by charter or ordinance establish general bid procedures, including public advertising, securing and opening bids, and any exemptions from competitive bidding. Exemptions must be substantially similar to those in T.C.A. § 6-56-304.

For municipalities with charter provisions that deal with competitive bidding but that set no bidding limits, the municipality may by ordinance set a limit not exceeding $25,000 over which public advertisement and competitive bidding must precede purchases. These municipalities must also by ordinance set a dollar limit not exceeding 40 percent of this bid limit amount over which the municipality need not advertise but when possible must obtain three competitive bids and below which no advertisement or competitive bidding is required. The ordinance also must establish procedures for public advertising, securing and opening bids, and any exemptions from competitive bidding, which must be substantially similar to those in T.C.A. § 6-56-304.

Although constitutionally questionable, T.C.A. § 6-56-306(a) allows municipalities with a population of 40,000 to 42,500 and municipalities with a population over 150,000 to set the dollar amount required for public advertisement and competitive bidding up to $25,000 as long as purchases between $10,000 and $25,000, when possible, are based upon at least three competitive bids.

The act requires public advertising and competitive bids for all purchases, leases, and lease-purchases except:

- Purchases through state contracts;
- Purchases from instrumentalities created by two or more cooperating governments;
- Goods and services purchased from nonprofit corporations formed to specifically serve municipalities;
- Purchases, leases, or lease-purchases of real property;
- Purchases, leases, or lease-purchases from other governments;
- When there is only one source of supply or proprietary product;
- Emergency purchases (complete documentation and a report to the municipality's governing body and chief executive are required for each emergency purchase);
- Leases or lease-purchase agreements requiring payments of less than $2,500 during a fiscal year;
- Purchases of perishable commodities when approved by the governing body and subject to certain documentation and reporting requirements;
- Fuel and fuel products, which may be purchased on the open market;
- Purchases, leases, or lease purchases of secondhand articles or equipment, etc., from federal, state, or local government units or agencies;
- Any contract for purchasing natural or propane gas for resale; and
- Purchases under $2,500, although cities may adopt an ordinance increasing the purchase amount to $10,000 before advertising and competitive bids are required.

Purchases between $1,000 and the amount established for advertising and competitive bids may be made without advertising on the open market but "wherever possible" must be based on three competitive bids. This $1,000 limit may be increased by ordinance to 40 percent of the amount established for purchases requiring advertisement and competitive bidding. Purchases of less than $1,000 or the amount set by ordinance do not require advertising or competitive bidding (T.C.A. §§ 6-56-301, *et seq.*).

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[12]For provisions dealing with purchasing by municipal school systems, see T.C.A. § 49-2-203(a)(3). See also the MTAS publication *Purchasing Guide for Tennessee Municipalities* by Ralph Cross.

State Government and Local Purchasing

Purchasing Through Competitive Sealed Proposals
Municipalities may make purchases using competitive sealed proposals rather than competitive sealed bids when the governing body determines that competitive sealed bidding is either not practicable or not advantageous to the municipality.

The governing body must adopt a procurement code before purchases may be made through competitive sealed proposals. MTAS, in conjunction with the comptroller's office, will develop a code that municipalities may adopt.

Purchases using competitive sealed proposals may be made only when qualifications, experience, and competence are more important than price.

In addition to qualifications, etc., being more important than price, these purchases may be made only when (1) there is more than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution, or (2) when there is no readily identifiable solution to a purchasing issue and competitive sealed proposals will assist in identifying one or more solutions. The law provides for adequate public notice, negotiation with proposers, confidentiality of proposals prior to the announcement of intent to award, and emergency purchases (T.C.A. § 12-3-1011).

Purchasing through State General Services
Municipalities may take advantage of state prices regardless of any charter or general law requirements pertaining to competitive bidding. Additionally, aside from any local or private act or charter or general law restrictions, municipalities may buy any item from local sources if:

- Local sources offer the item at the same or a lower price than the state contracts; or
- The item is not available to local governments under the provisions of contracts or price agreements entered into by the Tennessee Department of General Services. Not all prices quoted to the state are available to local governments (T.C.A. § 12-3-1001).The items, prices, and vendor information are online at the Department of General Service's Purchasing Division site at www.state.tn.us/generalserv/purchasing/kont.htm.

Purchases of Second-Hand Goods
Any municipality may buy second-hand items or equipment or other materials, supplies, commodities, and equipment from any other government or from private entities or individuals. These purchases may be made without competitive bidding and public advertising, regardless of charter requirements. When the purchase is made from a private person or entity, the municipality must document the general value through a listing in a nationally recognized publication or through an appraiser. The price paid must fall within 10 percent of the documented range (T.C.A. § 12-3-1003).

Purchases for Other Local Governments
A local governmental entity may buy supplies, equipment, and services for any other local governmental body at the latter's request. Examples of governmental entities include municipalities, counties and utility districts.

The acquisition must be made according to the purchasing entity's terms. The entity for which the purchase is made bears the acquisition cost.

The requesting entity meets all of its competitive bidding and public advertisement requirements if the purchasing body complies with its own buying requirements. When buying services (not supplies or equipment), it is a good idea for the purchasing entity to identify the requesting entity in the bid (T.C.A. § 12-3-1004).

Property Purchases at Public Auctions; Reporting
T.C.A. § 12-3-1006 authorizes cities to establish written procedures governing purchases at publicly advertised auctions and sets reporting requirements for the purchasing official.

Regulations for Competitive Bidding
T.C.A. § 12-3-1007 outlines regulations governing competitive bidding for municipalities with populations exceeding 150,000.

Transferring Real or Personal Property Among Governments
T.C.A. § 12-3-1005 authorizes counties, municipalities, and metropolitan governments, upon approval of their governing bodies, to purchase, trade, or receive as a gift any used or surplus personal property from another such government, the state of Tennessee, the federal government, and any division of such governments, regardless of any laws regulating competitive bidding and public advertisement. By resolution or ordinance of its governing body, any county, municipality, or metropolitan government may establish a procedure for disposing of its surplus personal property by selling, giving, trading, or bartering. Recipients include counties, municipalities, metropolitan governments, the state of Tennessee, the federal government, other states or their political subdivisions, the divisions of any of the foregoing, or other governmental entities. Any other law concerning selling or disposing of used or surplus personal property may be disregarded.

T.C.A. § 12-3-1010 authorizes municipalities, counties, and metropolitan governments to transfer the ownership of assets for fire protection purchased with federal, state, or local grants to volunteer fire departments within any such government. The volunteer fire department must be registered as a nonprofit organization with the Tennessee Secretary of State. This act must be approved locally before it becomes effective.

T.C.A. § 49-6-2006 authorizes local boards of education to transfer surplus real or personal school property "to the county or to any municipality within the county for public use without competitive bidding or sale."

Any municipality may contract with one or more public entities to transfer real or personal property when the public entity receiving the property uses it for a public purpose and the governing body of each authorizes the transfer. The entity transferring the property does not have to declare it surplus (T.C.A. § 12-9-110).

Products from State Agencies
The Tennessee prison system operates several workshops that manufacture products usable by city governments (*e.g.*, office furniture and equipment, street signs, paint, envelopes, and letterhead stationery). A catalog of such products is available from Tennessee State Industries in Nashville.

A general law mandates cities and towns to purchase articles "produced or manufactured" in prison industries if the board of standards certifies that the articles' quality is satisfactory, the prices are reasonable, the goods are available, and the materials meet the purchasing municipalities' requirements (T.C.A. §§ 41-22-119–120).

A similar general law says that political subdivisions must purchase "... all services or commodities required ... from qualified nonprofit work centers for the blind or severely handicapped ... provided the articles are certified by the board of standards and are available" (T.C.A. § 71-4-703).

Purchasing TRICOR Products
T.C.A. § 41-22-116 allows the Tennessee Rehabilitative Initiative in Correction (TRICOR) board to develop policies for the sale of TRICOR products to municipal employees.

Surplus State Property
The State Surplus Personal Property Act of 1976 permits the sale or transfer of certain state surplus personal property to municipalities and other specific entities when the transaction is a:

- Sale to political subdivisions of the state, governmental entities, and nonprofit corporations approved as authorized donees under the federal Surplus Property Program and sale to nonprofit, federally financed, rural electrical corporations;
- Sale for fair market value to nonprofit volunteer fire, police, and rescue organizations operated for a public purpose;
- Sale or transfer connected with transferring associated real property to a local government, and the sale or transfer is in the interest of the state;
- Sale or transfer without cost to local governments, provided the property was initially acquired from the federal government for civil defense purposes, and the sale or transfer is in the interest of the state; or
- Transfer, without cost, of surplus computer equipment to local educational agencies, provided that such property is suited for those purposes, and the transfer is in the interest of the state.

The sale or transfer of such property is subject to approval by the commissioner of general services, other state officials, and the board of standards under various rules and regulations.

For all surplus property, governmental entities and other authorized donees must retain possession of the property for one year unless the board of standards authorizes earlier disposal (T.C.A. §§ 12-2-401, *et seq.*).

Exemption from Gasoline Taxes
Gasoline, diesel, and certain other fuels purchased for a local government's exclusive use are exempted from federal excise tax. The vendor, rather than the local government, seeks a refund of excise taxes from the IRS. The vendor must be a "registered ultimate vendor," and the local government must supply the vendor with an "exemption certificate" (26 U.S.C.A. §§ 6416 and 6427).

Municipalities are exempt from state taxes on gasoline and other motor vehicle fuel purchased in the following ways:

- Delivered in 500-gallon quantities into city-owned or leased tanks within a 72-hour period. (Multiple fuel purchases of smaller quantities may be combined only during that period);
- Delivered by a wholesaler through a customer-controlled pump connected to a storage tank. The pump may not be located on a retail station island nor may any person associated with a retail station have any part in the sale or dispensing of fuel products from the pump. The pump shall have the ability to identify each customer separately, and only the customer matching the identity shall be allowed to purchase fuel; and
- From retail stations through a fleet credit card issued by the oil company to a government agency.

The fuel must be used exclusively for government purposes in equipment owned or leased by a government agency and operated only by government employees. To qualify for this exemption, a city must apply to the state commissioner of revenue for a two-year, numbered tax-exemption certificate (T.C.A. § 67-3-150).

Public advertising and competitive bidding are not required for any contract for purchasing natural or propane gas for resale or municipal use (T.C.A. § 7-51-910).

Professional Services

Bids Prohibited for Professional Services
Taking bids is prohibited "for legal services, fiscal agents or financial advisers or advisory services, educational consultants, and similar services by professional persons or groups of high ethical standards." Contracts for such services "shall be awarded on the basis of recognized competence and integrity." The statute specifically permits "interviewing eligible persons or groups to determine the capabilities of such persons or groups" (T.C.A. § 12-4-106).

Fiscal Agent Services Contracts
When issuing bonds, many cities employ a financial adviser or fiscal agent for advice on the issue's structure, timing, terms, etc. State law requires a written contract with the fiscal agent that covers services to be rendered, costs, and expenses. If the fiscal agent wishes to bid directly or indirectly on the debt issue, he or she must have the city's written permission (T.C.A. § 12-4-106).

Geologist Services
A municipality may contract for geological services only with a person who is licensed under T.C.A. Title 62, Chapter 36, Part 1, or with a firm employing a licensed geologist who is responsible for providing the services (T.C.A. § 62-36-105).

Miscellaneous Purchasing Provisions

Electronic Bidding and Contracting
T.C.A. § 12-3-704 allows municipalities to satisfy any mailing requirement by electronically distributing invitations to bid, requests for proposals, and other solicitations. Cities also may receive bids, proposals, and offers electronically. However, cities shall not require small businesses and minority-owned businesses to receive or respond to invitations to bid, requests for proposals, or other solicitations electronically.

The "Uniform Electronic Transactions Act," T.C.A. §§ 47-10-101, *et seq.*, provides that for parties who agree to conduct business in electronic form, signatures and contracts may not be denied legal effect solely because they are in electronic form.

Purchases of Certain Insurance
Cities may purchase tort liability insurance without public bidding if the insurance is purchased through a plan authorized and approved by an organization of governmental entities representing cities and counties, including the Tennessee Municipal League Risk Management Pool (T.C.A. § 29-20-407).

Cooperative Purchasing Agreements (State)
T.C.A. § 12-3-216 authorizes the commissioner of general services to enter into cooperative purchasing agreements with local governments provided that each contract is established through the use of competitive, sealed bids.

Cooperative Purchasing Agreements (Local)
T.C.A. § 12-3-1009 authorizes any local government to participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more other local governments in accordance with an agreement entered into between the participants.

Prohibited Vendors
It is unlawful for people convicted of violating the Sherman Antitrust Act, mail fraud provisions, and other criminal laws to solicit state or local government contracts if they are engaged in the criminal activity after May 22, 1981 (T.C.A. § 12-4-601, T.C.A. § 12-4-605).

"Buy America" Restrictions
A municipality is prohibited from buying materials for highway or roadway construction, resurfacing, or maintenance from any foreign government or company that is wholly owned and controlled by a foreign government unless satisfactory American-made materials are not available in sufficient quantities or if using American materials would increase the overall project cost by 5 percent or more (T.C.A. § 54-5-135).

Purchasing Motor Oil
Specifications for purchasing motor oil by competitive bids must include re-refined or recycled lubricating motor oil unless documentation is provided that the city's equipment requires specialized treatment. Invitations to bid must be sent to all businesses on the Department of General Services list of businesses that distribute such oil (T.C.A. § 12-3-531).

Contracts for Stabilizing the Cost of Fuel
T.C.A. § 7-51-911 allows municipalities to enter negotiated contracts with other municipalities and with financial institutions to stabilize the price of gasoline and diesel fuel purchased by the municipality.

Life-cycle Costing
"Except where private act or state law prohibits," cities are required to incorporate in their procurement policies the energy-efficiency standards and life-cycle costing used by the state in its procurement policies unless a city desires to use higher standards (T.C.A. §§ 12-3-601–612).

Contracts

Long-term Contracts and Lease Purchases
Agreements for up to 40 years may be made to lease-purchase real or tangible property having a useful life of one year or more for a governmental purpose. A contract for up to five years may be approved by resolution or ordinance. If the contract is for more than five years, a published notice of the meeting held to consider it is required seven days prior to the meeting. This section includes explicit authority to contract for the lease-purchase, construction, operation, or management of sewage treatment facilities (T.C.A. §§ 7-51-901–908).

Contracts for Painting and Maintenance of Water Tanks
Municipalities may make multiyear contracts for painting and other maintenance of water storage tanks based upon a request for proposals. Cost is not the sole criterion for evaluation using this purchasing method. Municipalities also may competitively bid these multiyear contracts (T.C.A. § 12-4-123).

Contractors' Bonds
Before letting a public works contract, a city is required to have contractors post a bond to the effect that they will pay for all labor and materials used by them or any "immediate or remote subcontractor under them" for 25 percent of any contract in excess of $100,000. In lieu of such a bond, the following may be substituted: U.S. Treasury bonds, notes or bills; general obligation bonds of Tennessee; certificates of deposit; a bank's letter of credit, or cash. In addition, certain other conditions are attached to the last three alternatives. Letters of credit and certificates or other evidences of deposit in state and federal institutions with their principal office in Tennessee or their principal office in another state but with at least one branch in Tennessee qualify. All letters of credit must be accompanied by an authorization of the contractor to deliver retained funds to the institution issuing the letter. The requirement for the bond must be included in the advertisement for the project. A municipality may not require any bond to be from any particular surety, agent, broker, or producer (T.C.A. § 12-4-201). In addition, prior to awarding a contract for the services of a construction manager, a city must require either a bid bond equal to 10 percent of the value of services proposed and the value of the work to be managed, or a performance bond equal to the combined value of services and work to be managed (T.C.A. § 62-6-129).

Drug-free Workplace Requirements
T.C.A. § 50-9-113 requires private construction companies with five or more employees that contract with a city to submit an affidavit that they have a drug-free workplace to the extent required of local governments. Cities may not contract with a contractor who does not comply with this statute. Municipalities must include the following in any bid or procurement specifications for construction services:

- A statement of whether or not the municipality has a workplace drug testing program;
- A statement that describes the program if it has one; and
- A statement that any bidder must have a testing program at least as stringent as the municipality's program (T.C.A. § 50-9-114).

Contractors' Licenses, Bids
Contractors and electrical, plumbing, and HVAC subcontractors who do jobs costing $25,000 or more must be licensed by the state (T.C.A. § 62-6-102, T.C.A. § 62-6-111). Officials issuing a permit or work order to an unlicensed contractor are guilty of a Class A misdemeanor (T.C.A. § 62-6-120).

The name, license number, license expiration date, and classification of contractors applying to bid on jobs must appear on the bid envelope when the bid is more than $25,000. If the bid is less than $25,000, only the name of the contractor must appear on the outside of the envelope. Upon opening the envelope, if the bid exceeds $25,000, the bid is automatically disqualified (T.C.A. § 62-6-119(b)). The name of a prime contractor who does electrical, plumbing, heating, ventilation, and air conditioning must appear on the outside of the envelope. Failure of a bidder to comply voids the bid, and it may not be opened. It is a Class A misdemeanor for any person to disregard the above requirements.

Municipalities may not impose additional licensing requirements on state-licensed contractors (T.C.A. § 62-6-111(i)(2)(c)).

T.C.A. § 62-6-137, however, allows municipalities to require a permit bond for contractors to ensure that the contractor complies with applicable laws and ordinances. Approving the permit bond program requires a two-thirds vote of the governing body.

Retainage For Construction Contracts
Retainage for construction contracts must be kept in an interest-bearing account. The amount of retainage is limited to 5 percent of the amount of the contract. Retainage amounts must be paid to the prime contractor within 90 days after completion or substantial completion of the project (T.C.A. §§ 66-11-134 and 66-34-103).

Chapter Eleven

Personnel

Public Officials

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

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

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

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

Honoraria
Local elected officials acting in their official capacity may not accept honoraria (T.C.A. § 2-10-116).

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

Employee Protection

Americans with Disabilities Act
The Americans with Disabilities Act (ADA) (42 U.S.C. §§ 12101, *et seq.*) contains five titles, each of which generally prohibits a broad range of discriminatory activities by public and private entities against persons with handicaps. Title I applies to private employers with 15 or more employees. Title II applies to *all* state and local government programs, services, facilities, and activities, including employment. Title III applies to public accommodations. Title IV applies to services provided by telecommunications companies. Title V provides for the adoption of accessibility standards and awarding of attorney fees; expressly applies the ADA to the states; provides that federal, state, and local laws stricter than the ADA are preserved; and provides that illegal drug use is not a disability under the ADA. Generally, all the ADA provisions that apply to an activity or function that has a counterpart in state and local governments apply to those governments through Title II.

The ADA imposes stringent requirements on state and local governments in two main areas, the first of which is **employment**. State and local governments must make "reasonable accommodation" for handicapped persons who are otherwise qualified for the job and who must be able to perform the essential functions of the job either before or after the accommodation.

The second area is **program accessibility**. State and local governments must make their programs accessible to handicapped persons. The meaning of accessibility in a particular case usually will depend on a number of factors, including the type of program, whether the program is offered in new or existing facilities, the ability of the program to be moved or modified to make it more accessible, etc.

The ADA is extremely complicated and vague in many places. In addition, Tennessee's handicapped discrimination statute interplays with the ADA (T.C.A. § 8-50-103; *Cecil v. Gibson*, 820 S.W.2d 361 (Tenn. Ct. App. 1991); *Thorpe v. Alber's Inc.*, 992 F.Supp. 84 (E.D. Tenn. 1996)), as do the Family and Medical Leave Act and the Workers' Compensation Law. The body of litigation interpreting and applying the ADA is still in its infancy and has not yet addressed even fundamental questions, such as "What is a handicapped person within the meaning of the ADA?" For those reasons, questions involving a city's responsibilities under the ADA, particularly in individual cases, should be approached only with the aid of sound legal and practical advice. Many publications on the ADA are available, but due to the rapid development of the law on that subject, only current ones should be consulted.

Handicapped People
T.C.A. § 8-50-103 declares: "There shall be no discrimination in the hiring, firing, and other terms and conditions of employment of the state of Tennessee or any political subdivision of the state against any applicant for employment based solely upon any physical, mental, or visual handicap of the applicant unless such handicap to some degree prevents the applicant from performing the duties required by the employment sought or impairs the performance of the work involved. Furthermore, no blind person shall be discriminated against in any such employment practices because such person uses a guide dog. A violation of this provision is a Class C misdemeanor." The definition of "handicap" includes people with contagious diseases, presumably including acquired immune deficiency syndrome (AIDS).

Workplace Violence
Employers, including local governments, that have an employee who has suffered workplace violence may seek restraining orders and injunctions against further violence by the subject individual against the employee while the employee is in the workplace or performing work (T.C.A. §§ 20-14-101, *et seq.*).

Whistle-blower Protection
Cities are prohibited from discharging an employee solely for refusing to participate in or remain silent about illegal activities. An employee who prevails in a retaliatory discharge lawsuit against an employer may recover reasonable attorney fees and costs (T.C.A. § 50-1-304).

Tennessee Anti-Slapp Act
The Tennessee Anti-Slapp (Strategic Lawsuits Against Political Participation) Act of 1997 grants immunity to individuals who, in good faith, report wrongdoing involving a public or government issue to the appropriate local, state, or federal government entity. The act's purpose is to protect concerned individuals and the information they provide, which is vital to effective law enforcement and efficient government operation.

This act allows the appropriate government agency to intervene in a lawsuit brought against a person because he or she communicated the information. Immunity does not apply if the person knew the information was false, if the informant recklessly disregarded the information's falsity, or if the information pertained to a person or entity other than a public figure. The winner in a case based on the immunity defense is entitled to recover costs and reasonable attorney fees (T.C.A. §§ 4-21-1001, *et seq.*).

Employee's Right to Contact Elected Officials
Disciplining or discriminating against a public employee for communicating with an elected public official is prohibited, with triple damages permitted for violations. However, an employer may correct or reprimand an employee "for making untrue allegations concerning any job-related matter" (T.C.A. §§ 8-50-601–604).

Civil Service Boards
Most local government civil service provisions are in individual charters or municipal codes. No general laws require Tennessee cities to have civil service systems, and only a few general laws apply to existing systems.

Civil service board members are prohibited from engaging in business with the city or with its employees. Members must be residents of the city for one year before appointment (T.C.A. § 6-54-114).

Expense Reimbursements, Travel, and Vehicle Use Policies
Municipalities are authorized to reimburse expenses related to the office of the mayor; members of the

governing body, boards, commissions, or committees; and to any official or employee whose salary is set by charter or general law. To reimburse such expenses, a city must:

- Pass an ordinance authorizing a written expense reimbursement policy, which must be filed with the comptroller's office unless the city adopts MTAS's model policy. If the city adopts the MTAS model policy, it must notify the comptroller in writing that the policy was adopted and the date it was adopted;
- Require the chief administrative officer or his or her designee to prescribe expense forms, examine expense reports, and determine reimbursability; and
- Adopt a written vehicle use policy separate from the travel and expense policy.

Cities may pay travel expenses directly to the provider rather than to the official or employee. Municipalities with a population of greater than 100,000 are exempt from these provisions (T.C.A. §§ 6-54-901, *et seq.*).

If officials or employees are overcompensated for an expenditure, the overage is considered salary. Such a payment could exceed salary limitations set in the charter, and this could violate T.C.A. § 39-16-402(a)(5). Receiving any benefit not otherwise authorized by law is a Class E felony.

Health Insurance

Group Health Insurance

Municipalities have supplementary authority to establish group insurance plans (life, hospitalization, disability, or medical) for officials and employees after the governing body:

- Appoints a committee to recommend a contract with an insurance company authorized to do business in Tennessee;
- Approves the contract by a majority vote (the council may later modify the contract); and
- Provides an election so employees and officials may accept or reject such coverage.

The city may pay all the costs or may pay a portion of the costs and deduct the remainder from employees' paychecks. Such a plan may be discontinued with at least a three-month notice to the participants (T.C.A. §§ 8-27-601–607).

State standards for a group health plan require coverage for:

- Mammography screenings if the benefits include mastectomies (T.C.A. § 56-7-2502);
- Reconstructive surgery if mastectomies are provided (T.C.A. § 56-7-2507);
- Speech and hearing benefits (T.C.A. § 56-7-2603);
- Prostate cancer screenings ordered by a physician (T.C.A. § 56-7-2354);
- Mental health treatment to the same extent as medical or surgical benefits (T.C.A. § 56-7-2360); and
- Infant hearing screenings (T.C.A. § 56-7-2508).

State Group Health Insurance

Cities may join the state's group health insurance program, which provides group health benefits for local government employees. This law provides for continued health coverage for the dependents of an employee killed while on active military duty (T.C.A. § 8-27-207). A similar program is provided for school system employees (T.C.A. §§ 8-27-301, *et seq.*).

COBRA

"COBRA" stands for Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. §§ 1161–1168 and 42 U.S.C. §§ 300bb-1–300bb-8). Upon occurrence of a qualifying event, this federal law requires municipalities with 20 or more employees to continue health overage, at the employee's expense, for a certain period at the group rate. Qualifying events include but are not limited to:

- Termination of employment (except for gross misconduct);
- Death of the covered employee;
- Reduction in work hours; and
- Divorce.

Once the qualifying event occurs, the employee or qualified beneficiaries must be given at least a 60-day notice to elect continuation of health care coverage. The period for which coverage can be continued varies, depending on the qualifying event. The notice must advise the ex-employee of assistance available from the state Department of Social Services (T.C.A. § 4-3-1404).

Health Insurance Act of 1996
The Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides, among other things, improved portability and continuity of health insurance coverage.

The act is designed to protect workers from losing their health insurance coverage in cases where they lose their jobs, change jobs, or become self-employed. It does so by placing new restrictions on pre-existing condition exclusions, coverage termination, and limitations based on health status.

The act applies to group health plans, including government and church plans, that cover two or more employees. HIPAA coverage applies to any health insurance coverage offered in connection with a group health plan, including limited-scope dental and vision benefits, long-term care benefits, medical supplement plans, and specific disease or illness policies.

In general, group health plans are sponsored by employers, employee organizations, or both. HIPAA improves the availability and portability of health coverage by:

- Limiting exclusions for pre-existing medical conditions;
- Providing credit for prior health coverage and notifying new group health plans of previous coverage;
- Providing new enrollment rights to individuals who lose other health coverage or have a new dependent;
- Prohibiting discrimination in enrollment and premiums based on health status;
- Guaranteeing renewability of health insurance coverage; and
- Preserving the state's traditional role in regulating health insurance.

Opt-out Option
The act also establishes a provision allowing state and local governments with fully or partially self-funded programs to "opt out" of the requirement. However, there still are rules a city must follow if it opts out. The act also modifies COBRA rules affecting individuals with disabilities, newborns, and newly adopted children, permitting them an additional 11 months of coverage. (Individuals must pay 150 percent of the premium during the extension.) Excluded from the definition of group health insurance are:

- Coverage only for accidents, including accidental death and dismemberment;
- Disability income insurance;
- Liability insurance, including general liability and automobile liability insurance;
- Coverage issued as a supplement to liability insurance;
- Workers' compensation or similar insurance;
- Automobile medical payment insurance;
- Credit-only insurance (*i.e.*, mortgage insurance); and
- Coverage for on-site medical clinics.

Exemption
Cities with fully or partially self-funded programs may elect to be exempt from certain requirements of the law. The exemption remains in effect for a single plan year. Cities may elect to be exempt from the following requirements:

- Limitations or pre-existing condition exclusion periods;
- Special enrollment periods for individuals (and dependents) losing other coverage;
- Prohibitions on discriminating against individual participants and beneficiaries based on health status;
- Standards relating to benefits for mothers and newborns; and
- Parity in the application of certain limits to mental health benefits.

A city that makes the exemption election must notify the participants individually of the election and explain its consequences. This notice must be provided to each participant at the time of enrollment under the plan and to all participants annually.

The notice must include at least the following information:

- A statement that, in general, federal law imposes requirements on group health plans concerning pre-existing conditions, special enrollment periods, discrimination, benefits for mothers and newborns, and parity for mental health benefits (which must be individually described in the notice);
- A statement that federal law gives the plan sponsor the right to exempt the plan in whole or in part, and that the plan sponsor has elected to do so;
- A statement identifying which parts of the plan are subject to the election and each of the requirements from which the plan sponsor has elected to be exempt; and

- If the plan chooses to provide any of the protections voluntarily, or is required under state law to do so, a statement identifying which protections apply.

The requirements of this exemption are considered to have been met if the notice is printed prominently in the summary plan or equivalent document and each participant receives a copy of that document at the time of enrollment and annually thereafter.

Notwithstanding an election under this section, a city's plan must provide for certification and disclosure of creditable coverage to participants and their dependents. Failure to comply with this requirement invalidates an election made under this section.

The election of exemption must be in writing. It must include an attached copy of the notice to participants of the exemption election. It must state the name of the plan and the name and address of the plan administrator. It must either state that the plan does not include premium-funded health insurance coverage, or it must identify which portion of the plan is not funded through insurance. Additionally, the election must be made in conformance with all of the plan sponsor's rules, including any required public hearings. Also, the election document must certify that the person signing it, including, if applicable, a third-party plan administrator, is legally authorized by the plan sponsor to do so. Finally, the election document must be signed by the person legally authorized by the plan sponsor to do so.

Since most city plans are not subject to collective bargaining agreements, the election must be sent to the Health Care Financing Administration (HCFA) by the day preceding the beginning date of the plan year. HCFA may extend the deadline for good cause.

If the city fails to file a timely exemption election, the plan is subject to the requirements of the act for the entire plan year. If filed appropriately, the exemption may be extended through subsequent elections.

Upon a finding by HCFA that a city's plan has failed to comply with the requirements of the act and the city has failed to correct the noncompliance within 30 days, HCFA will notify the city that its election has been invalidated and that it is subject to the requirements of the entire act. A plan that fails to comply with the requirements is subject to federal enforcement by HCFA, including appropriate civil money penalties. The maximum penalty may not exceed $100 for each day for each responsible entity for each individual to whom such a failure occurs. (See MTAS *Hot Topic Health Insurance Portability and Accountability Act of 1996*, Richard Stokes, 1999.)

Non-pension Post-employment Benefits
T.C.A. §§ 8-50-1201, *et seq*., authorize municipalities to establish an investment trust to pre-fund post-employment benefits such as medical, prescription drug, dental, vision, Medicare Part B or D, life insurance, long-term care, or long-term disability premiums. A municipality with a population of more than150,000 may issue general obligation or revenue bonds to fund up to 50 percent of these non-pension post-employment benefits (T.C.A. §§ 9-21-105 and 127).

Other Employee Benefits

Deferred Compensation
Cities may set up deferred compensation programs so that officials and employees can meet IRS requirements to defer federal income taxes (T.C.A. §§ 8-25-101–108). A profit sharing or salary reduction plan to meet requirements of Section 401(k) of the Internal Revenue Code, including a Roth 401(k), also may be established by ordinance or resolution (T.C.A. §§ 8-25-301–305).

Cafeteria Benefit Plan and Transportation Fringe Benefit Plan
As permitted by Section 125 of the federal Internal Revenue Code, a municipality may make cafeteria benefit plans available to its employees. Day-care services may be provided under the plan, and the plan may be administered internally or by contract. A municipality also may make available a qualified transportation fringe benefit plan in accordance with § 132(f) of the Internal Revenue Code (T.C.A. § 8-25-501).

Family and Medical Leave

Federal Family and Medical Leave Act
The federal Family and Medical Leave Act (FMLA) (29 U.S.C. §§ 2601, *et seq.*) generally covers private employers with 50 or more employees and "all" public agencies, regardless of the number of employees.

29 C.F.R. § 825.108(c)(1) says that "A state or a political subdivision of the state constitutes a single public agency, and, therefore, a state is a single employer, a county is a single employer, and a city or a town is a single employer." However, application of the FMLA to local governments, regardless of their number of employees, apparently has a limited meaning. 29 C.F.R. § 825.108(d) says, "All public agencies are covered by FMLA regardless of the number of employees; they are not subject to the coverage threshold of 50 employees carried on the payroll each day for 20 or more weeks in a year. However, employees of public agencies must meet all the requirements of eligibility, including the requirement that the employer (e.g., state) employ 50 employees at the worksite or within 75 miles."

In addition, 29 C.F.R. 825.110 says "(a)n 'eligible employee' is the employee of a covered employer who:

- Has been employed by the employer for at least 12 months, and
- Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, and
- Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of the worksite."

Eligible public employees are entitled to 12 weeks of unpaid leave for childbirth, placing a child for adoption or foster care, a serious health condition that makes the employee unable to perform job duties, and a serious health condition of a spouse, son, daughter, or parent.

The U.S. Sixth Circuit Court of Appeals held in *Rollins v. Wilson County Government*, 154 F.3d 626 (1998), that an employee of Wilson County, Tennessee, for eight months and an employee of the Wilson County School Board for four months could not aggregate the two terms of employment for the purpose of meeting the 12-month employment requirement for eligibility for FMLA leave because the two entities were separate public agencies.

Rules governing the conditions under which leave must be granted, the length of leave under certain conditions, and the rights of the city and the employee when the latter returns to work are complicated and frequently involve questions that have implications for both parties under Tennessee's Maternity Leave Act (T.C.A. § 4-21-408), the Americans with Disabilities Act, and the Workers' Compensation Law. A number of publications analyze the law under the FMLA, but only the most current ones should be consulted.

State Parental Leave Act
Cities with more than 100 full-time employees are required to grant up to four months of parental leave for childbirth or adoption to employees who have been employed full time for at least 12 consecutive months. At the city's discretion, parental leave may be with or without pay, but the leave cannot affect the employee's right to receive vacation time, sick leave, seniority, length-of-service credits, and other benefits. Except in the event of a medical emergency or adoption, the employee is required to give a three-month advance notice of the intent to take parental leave (T.C.A. § 4-21-408).

Retirement

Multiple Memberships Prohibited
"(N)o public official or employee shall have multiple memberships in any retirement program(s) ... financed from public funds, whereby such official or employee obtains or accrues pensions or retirement benefits based upon the same period of service to the state ... or any of its political subdivisions." This section does not exclude participation in defined contribution plans established under Sections 401(k)c and 457 of the Internal Revenue Code as amended, subject to certain limitations. All 401(k), 403(b), and 457 plans established by public employers participating in TCRS in which employer contributions are made must be approved by the director of the state retirement system (T.C.A. § 8-35-111).

Mandatory Retirement for Police Officers and Firefighters
Municipalities may establish by resolution a mandatory retirement age for police officers and firefighters except for the police chief and fire chief. The mandatory retirement age may not violate the federal Age

Discrimination in Employment Act. The age must be uniform for all affected employees and be not less than 60 years old.

The mandate is effective on the first day of the month after an employee reaches the required age and allows a supplemental bridge benefit (see T.C.A. § 8-36-211) if the retirement age is too young for employees to receive Social Security benefits
(T.C.A. § 8-36-205).

The bridge benefit is 0.75 percent of an employee's average compensation multiplied by the years of service. This benefit does not apply to police or fire department supervisors or administrators who spend less than 50 percent of their time performing the daily duties of police officers or firefighters. They may work until they reach the age requirement for receiving Social Security benefits if they file a waiver with the retirement division for retirement and bridge benefits before the first day of the month the member attains the age established by the city (T.C.A. § 8-36-205).

Police officers and firefighters subject to a mandatory retirement requirement may retire with full benefits under TCRS upon attaining 55 years of age and completing 25 years of creditable service if this early retirement program is approved by the municipality. The supplemental bridge benefit also may begin the month after the member attains 55 if this supplemental bridge benefit program is approved by the municipality (T.C.A. §§ 8-36-201 and 211).

State Retirement System, Membership
Any Tennessee municipality may elect to cover its employees under the Tennessee Consolidated Retirement System (TCRS). The option to participate is exercised by a resolution of the governing body. The state Division of Retirement will furnish a draft resolution. The resolution may exclude certain employment positions, which can be included later. A city council also may elect to make its members participants in TCRS (T.C.A. § 8-35-226). After a political subdivision elects to participate in the state retirement system, and such election is approved by the board of trustees, all eligible current employees may participate as provided in Chapters 34-37 of Title 8 of T.C.A. However, membership in TCRS is mandatory for all eligible employees entering service of the employer after the date of approval is given (T.C.A. §§ 8-35-201–232).

A municipality, utility, or other instrumentality that operates under its own governing board may withdraw from the system by a two-thirds vote of its governing body and by giving a one-year written notice. A number of specific conditions are prescribed for such an action (T.C.A. § 8-35-218).

T.C.A. § 8-34-605(b)(2) has been amended to increase the period for retirement credit for military service in Vietnam from August 5, 1964, to May 7, 1975. The new period is February 28, 1961, to May 7, 1975.

Legislative Benefit Improvements
Any retirement benefit improvement passed by the legislature will apply automatically to participating municipalities on January 1 following the effective date if the aggregate pension liability of all participating political subdivisions is increased by 1 percent or less. A municipality may opt out of the benefit increase, however, no later than November 1 after the effective date (T.C.A. § 8-35-202).

Increases in Benefits and Earnable Compensation
Yearly increases in earnable compensation will be continued indefinitely for noncontributory employees. The local governing body must authorize and accept by resolution the liability for such increases (T.C.A. § 8-34-101(4)(B)).

Increases in retirement benefits are based on increases in the U.S. Consumer Price Index when the index is at least 0.5 percent. These increases are optional for local governments (T.C.A. § 8-36-701).

Re-employment of Retirees
A retired TCRS member may be re-employed on a temporary basis by a TCRS employer without loss of benefits. The retiree may not work more than 120 days during a calendar year or receive more than 60 percent of the salary the retiree received in the year immediately preceding retirement. This amount may be adjusted each year. Working more than the time allowed or receiving more than the amount allowed will result in a reduction of retirement benefits (T.C.A. § 8-36-805).

Police and Fire Minimum Retirement Allowances
A municipality with its own retirement system may elect to be covered by a state act that prescribes minimum retirement pay for police officers and firefighters with 25 or more years of service. Under the act,

pensions are 2 percent of the highest salary multiplied by the years of service up to 30 years. Pensions may not be less than 50 percent or more than 60 percent of the employee's highest monthly salary plus annual increases not exceeding 3 percent based on the Consumer Price Index. Any such adoption "shall be permanent and such action may not be repealed." This law may not be used if the city is under the Tennessee state retirement system or has a system "in which members' or beneficiaries' benefits are computed in conjunction with or reduced by Social Security benefits" (T.C.A. §§ 6-54-801–803).

Reports on City Retirement System
If a city is liable for a local retirement plan, it must file an annual report on or before November 1 with the secretary of the Council on Pensions and Insurance on forms prescribed by the council (T.C.A. §§ 3-9-201–204). The report must include:

- Year-end financial statements for the most recent plan year ending on or before the preceding June 30;
- The system's most recent actuarial valuation made by a professionally qualified actuary; and
- Publications by the plan's administrator to the members and other interested parties.

Social Security
Any city may submit to the state Old Age and Survivors Insurance Agency a plan for participating in the federal Social Security program. For many municipalities, participation is mandatory. To find out which cities must participate, contact the state Department of Employment Security. When approved, the plan is administered under the federal law and an agreement between the federal and state governments. Every political subdivision in the Tennessee Consolidated Retirement System must participate. No such plan may be terminated, either in its entirety or as to any coverage group, after the effective date of the Social Security Amendments of 1983. A 1985 amendment made it optional for political subdivisions to share the cost of state administration of this program (T.C.A. §§ 8-38-101, *et seq.*).

Workers' Compensation

City governments are among the few employers that do not automatically have to provide workers' compensation to employees. Cities may voluntarily agree to come under the state's Workers' Compensation Law. Coverage becomes effective 30 days after a city files a written notice with the commissioner of labor. A city may choose to provide workers' compensation coverage only to certain departments (T.C.A. §§ 50-6-101, *et seq.*). Effective July 1, 2000, employers with more than 250 employees must file employee information on magnetic media (T.C.A. § 50-7-404 (c) (3)-(4)).

If a city elects to provide workers' compensation and a claim is filed, the employer is required to submit a wage statement to the court within 60 days of answering the complaint. The statement must detail the employee's wages for the previous 52 weeks unless the employer stipulates that the maximum rate applies (T.C.A. § 50-6-225(c)).

Actions for recovery are limited to one year from the date of the accident unless the employer makes voluntary payments within that period. In that event, an action for unpaid compensation may be filed one year from the last medical treatment resulting from the accident or from the date of the last voluntary payment, whichever is later (T.C.A. § 50-6-203).

Coverage may be canceled at any time by giving written notice. Designated city departments or divisions may be covered or canceled on a selective basis (T.C.A. § 50-6-106(5)).

A person who receives unemployment compensation and workers' compensation temporary disability benefits for the same period must repay the unemployment compensation benefits (T.C.A. § 50-6-207).

The Tennessee Municipal League Risk Management Pool operates a workers' compensation insurance pool for member cities.

Unemployment Compensation

Unemployment Compensation: Penalties for Failure to Pay
T.C.A. §§ 50-7-101, *et seq.*, prescribe the state's unemployment compensation program. Information concerning the application of this program to Tennessee municipalities can be obtained from local offices of the state Department of Employment Security. The statute contains a number of remedies available to

the state for collection of unpaid premiums (T.C.A. §§ 50-7-401, *et seq.*).

Health and Safety

Tennessee Occupational Safety and Health Program
Under the Tennessee Occupational Safety and Health Act (T.C.A. § 50-3-405(a)), all cities must comply with occupational safety and health standards or regulations promulgated by this act (T.C.A. § 50-3-910). The law requires employers, including local governments, to "... furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or harm ..." and to comply with certain other requirements (T.C.A. § 50-3-105). Cities may elect to be treated as private employers or to establish their own safety and health training programs consistent with state regulations. Municipalities have until July 1, 2006, to make this decision. Municipalities created after July 1, 2004, have two years after their creation to make the election (T.C.A. § 50-3-910(b)).

A program must inform employees of state regulations applicable to their work environments and instruct them to recognize and avoid unsafe conditions. If a city establishes its own program, civil penalties will not be imposed against the local government for violations. The state Department of Labor merely inspects for compliance and reports noncompliance to the governor and the General Assembly (T.C.A. § 50-3-911). Special federal requirements have recently been enacted regarding employees, such as sewer operators and paramedics, who work in "permit-required confined spaces." Cities must assure that emergency medical technicians (EMTs), public works employees, water and wastewater workers, and others at "high risk" are protected from toxic, explosive, or asphyxiating atmospheres and possible engulfment from small particles such as liquids, grain, or sawdust (29 C.F.R. § 1910.146).

Cities also must adopt and administer an infection control program to eliminate, or at least minimize, worker exposure to bloodborne pathogens, such as the hepatitis B virus and the human immunodeficiency virus (HIV) (29 C.F.R. § 1910.1030). To meet these federal requirements, cities must:

- Establish and adopt a written exposure control plan;
- Adopt a universal precautions policy (a strategy that assumes every direct contact with body fluids is infectious);
- Provide protective equipment where there are exposure hazards;
- Ensure that the workplace is clean and sanitary;
- Properly dispose of contaminated waste;
- Provide training for "high-risk" employees;
- Provide hepatitis B vaccinations and post-exposure evaluations/follow-up; and
- Establish and maintain accurate records.

Special Personnel Provisions for Police and Fire Employees

Police Pay Supplements and Firefighter Educational Incentives
The state provides yearly pay supplements to police officers and educational incentives to firefighters who meet specified training and certification requirements. The fire incentive is administered by the Commission on Firefighting Personnel Standards and Education and is funded by a portion of the state premium tax on fire insurance (T.C.A. §§ 4-24-202, 56-4-2050, and 38-8-111).

Police and Fire Employee Death from Lung or Heart Disease
If the city has a compensation plan for line-of-duty injuries or deaths, these provisions apply to law enforcement officials in a "regular law enforcement department" or firefighters in a "regular fire department." The act establishes a presumption that "hypertension or heart disease" of police employees and "disease of the lungs, hypertension, or heart disease" of fire employees were "suffered in the course of employment." This presumption does not apply, however, to workers' compensation benefits for firefighters. The officer is eligible for on-the-job injury benefits unless the presumption can be overcome by "competent medical evidence." The presumption does not apply unless a pre-employment physical showed no evidence of such disabilities (T.C.A. § 7-51-201).

Fire employee benefits for hypertension and heart disease apply to emergency medical service employees in counties with more than 400,000 people, but another statement of legislative intent says the section "... permit(s) and require(s) any such municipal corporation or political subdivision of the state ... to be covered by its provisions" (T.C.A. § 7-51-201(c)(2)).

Volunteer Firefighters, Rescue Workers, or Law Enforcement Officers Killed in Line of Duty
T.C.A. § 7-51-206 grants $25,000 to the estate of any regular, full-time or unpaid volunteer firefighter or police officer killed in the line of duty. T.C.A. § 7-51-207 does the same for the estate of a volunteer rescue worker killed in the line of duty.

Police Bill of Rights
The Police Bill of Rights (T.C.A. § 38-8-301) gives police officers certain minimum rights in these areas:

- Investigations that are likely to lead to personnel actions against the police officer;
- Compelled or requested disclosure of the police officer's income and other financial information;
- The right of the police officer to receive notice of charges against him or her and a right to respond to those charges, including the right to counsel at the police officer's own expense; and
- The right of the police officer to a post-personnel action hearing and the rules governing that hearing. The police officer still may be suspended without pay under certain circumstances.

The Police Bill of Rights applies only to municipalities that provide a property interest in employment for police officers but do not have established procedures governing an officer's dismissal, demotion, suspension, or transfer for punitive reasons (T.C.A. §§ 38-8-301, *et seq.*).

Political Activity by Police Officers
T.C.A. § 38-8-351 provides that no law enforcement officer shall engage in political activity or support or oppose any candidate, party, or measure in any election when on duty or when acting in an official capacity. However, when off duty and acting as a private citizen, no officer shall be prohibited from engaging in political activity or compelled to engage in political activity. This provision is contained in the same statute as the Police Bill of Rights but probably applies to all police officers rather than only those police officers in municipalities where police officers have a property right in their employment. For a general authorization for municipal employees to engage in political activity, see T.C.A. § 7-51-1501. See also "Political Activities by Municipal Employees" later in this chapter.

Firefighters' Dues
Cities are required to provide payroll deductions for firefighter association membership dues upon request of their full-time employees if 40 percent of the employees are association members (T.C.A. § 7-51-204).

Jury Duty for Police and Fire Employees
All members of fire companies and full-time law enforcement officers have a limited exemption from jury duty. Upon receipt of a summons to serve, such employees must notify the court clerk of a seven-day period within the next 12 months when they are available to serve. They will be required to serve on only one jury during the seven days (T.C.A. § 22-1-103(c)).

Employment Rights of Volunteer Firefighters
T.C.A. § 50-1-307 grants certain employment rights to volunteer firefighters. Among other things, it prohibits terminating a firefighter solely because he or she is absent from work because of an emergency. It also creates a civil cause of action for the firefighter terminated in violation of the provisions of this law. The provisions of this section do not expressly apply to a municipality as an employer of a volunteer firefighter.

Fire Chief Training
T.C.A. § 68-102-108 requires new assistants to the state fire marshal (generally, municipal fire chiefs) to receive 16 hours of training within one year after certification as an assistant. The training will be done by the Fire Service and Codes Enforcement Academy and will consist of training in incident reporting, fire cause determination, basic management skills, etc.

Miscellaneous Personnel Provisions

Personnel Policy Requirements
All municipalities incorporated before June 13, 1997, that did not already have a personnel policy were required by July 1, 1998, to adopt such a policy by ordinance, resolution, or otherwise. Municipalities incorporated after June 13, 1997, have two years after incorporation to adopt and implement a personnel policy.

A city may use the model personnel policy developed by MTAS or draft its own. The personnel policy must apply "fairly, impartially, and uniformly to the extent practicable to each department of the municipal government." Among other things, the policy should outline:

- Hiring procedures;
- Benefits and personnel rules and regulations;
- Fair and reasonable complaint conference and hearing procedures for dismissed, demoted, or suspended employees;
- Procedures for compliance with relevant federal laws, such as the Fair Labor Standards Act and the Americans with Disabilities Act;
- Drug and alcohol testing procedures; and
- Sexual harassment regulations.

The law mandates that the policy may not grant a property right or contract right to the job to any employee.

A copy of the resolution or ordinance (or the caption) adopting the policy must be published in a newspaper of general circulation in the municipality prior to its adoption. Also, a copy of the personnel policy must be kept in the city recorder's office and made available to employees upon request (T.C.A. § 6-54-123).

A municipality with a personnel policy that places an employee on leave for any time immediately following any arrest must pay back pay to the employee if the charges are dropped or the employee is found not guilty (T.C.A. 7-51-1701).

Code of Ethics
Each municipality must adopt a code of ethics by ordinance. Failure to do so can result in ouster of members of the governing body. MTAS has developed a model code of ethics. Municipalities that adopt the model must notify the Tennessee Ethics Commission that they adopted the model, along with the date of adoption. Municipalities that do not adopt the MTAS model must send a copy of their ordinance to the ethics commission (T.C.A. §§ 8-17-101, *et seq*.).

Drug Testing
Many municipalities have adopted regulations that provide for drug and alcohol testing of their employees. The testing of some municipal employees is required under the Omnibus Transportation Employee Testing Act of 1991. Cities must conduct pre-employment, reasonable suspicion, random, return-to-duty, and follow-up drug and alcohol testing on city employees who are required to obtain a commercial driver's license and who drive:

- Vehicles with a gross weight of more than 26,000 pounds;
- Trailers with a gross weight of more than 10,000 pounds;
- Vehicles designed to transport more than 15 passengers, including the driver; or
- Any vehicle with placards that hauls hazardous materials.

The definition of "driver" includes regular and part-time employees, occasional drivers, leased drivers, and independent contractors. Emergency vehicle drivers are exempt.

Similar testing requirements apply to certain gas utility employees (49 U.S.C.A. § 31306; 49 C.F.R. Part 40, 199, 382; T.C.A. §§ 55-50-401, *et seq.*).

In 1996, Tennessee adopted the Drug-Free Workplace Programs Act (DFWPA). This authorizes, but does not require, employers in Tennessee to adopt drug and alcohol testing programs that conform to the DFWPA and to rules adopted by the Tennessee Department of Labor in accordance with that act (T.C.A. §§ 50-9-101, *et seq.*; Rules of the Department of Labor, Division of Workers' Compensation, Chapter 0800-2-12, Drug-Free Workplace Programs). Employers who adopt such programs are eligible for

reduced workers' compensation premiums. In addition, where an employee is injured in the course of his or her employment and tests positive for certain drugs at a prescribed level, a rebuttable presumption is created that the injury was occasioned primarily by the presence of the drug or drugs. Such a worker may be disciplined up to and including termination and forfeits his or her eligibility for workers' compensation medical and indemnity benefits.

In addition to requiring, and in some instances permitting, certain drug tests of employees under prescribed circumstances, the DFWPA requires employers to perform pre-employment drug testing of all job applicants. But it expressly provides that "for public employees, such testing shall be limited to the extent permitted by the Tennessee and federal constitutions" (T.C.A. § 50-9-104(a)).

Both the DFWPA and the Department of Labor Rules provide in detail:

- The purpose, scope, and policies reflected in the DFWPA and the tests implemented under the Drug-Free Workplace Program;
- Definitions that apply to the interpretation and application of the DFWPA;
- The contents of the notice and policy statement required to be provided by the employer to employees and job applicants prior to drug and alcohol testing;
- The types of testing allowed and required (job applicant testing, routine fitness-for-duty testing, follow-up testing, and post-accident testing);
- The consequences to the employee or applicant for refusing to test;
- The test itself;
- Drug and alcohol sample collection procedures;
- Procedures for reporting and reviewing test results;
- Employee protections;
- Substance abuse education and awareness requirements;
- Confidentiality of information and documents gathered in drug and alcohol testing programs, including the tests; and
- The employer's application form to the Workers' Compensation Division of the Department of Labor to adopt the Drug-Free Workplace Program.

Drug and alcohol testing covered by the DFWPA appears to include the testing of city employees according to procedures required under federal laws and regulations. MTAS has developed a model drug testing policy for municipalities. This model policy may be obtained from an MTAS management consultant.

Criminal Background Checks

Cities may require potential employees to agree to release criminal background information to the city, to supply a fingerprint sample, and to submit to a criminal records check by the TBI and the FBI. Costs of the background check must be paid by the city but may be passed on to the successful applicant. The city may designate job titles or classifications to which this would apply. However, these classifications would not supersede any state requirements for a particular job (T.C.A. § 6-54-129). Another provision of law allows criminal background checks on applicants for a job as emergency medical technician or paramedic (T.C.A. § 68-140-525).

T.C.A. § 68-102-308 allows municipalities to require criminal background checks on applicants for and current employees or volunteers in firefighting positions. The employer must have a policy on when background checks can be done on existing employees and volunteers.

Military Service

Municipal employees are among the public employees guaranteed re-employment rights after active or reserve military service (T.C.A. §§ 8-33-101–108). Members of reserve components of the U.S. armed forces (including the National Guard) are entitled to leaves of absence while engaged in "duty or training in the service of this state, or of the United States, under competent orders." They must be given such leave with pay not exceeding 20 working days in any one calendar year, including weekends if regularly scheduled for work (T.C.A. § 8-33-109). The intent of the pay provision is to allow employees to receive their regular pay, in addition to military pay, for two-week summer training camp and for weekends an employee is regularly scheduled for work but has military duty. In addition, this section allows public employers to provide partial compensation to employees while serving under competent orders, in addition to the 20 days of compensation referred to above.

Smoking Rights

A municipality is prohibited from discharging an employee for using tobacco as long as the employee abides by the employer's work rules regarding tobacco use (T.C.A. § 50-1-304).

Notification of Smoking Ban
The state ban on smoking in places of employment must be communicated to all existing employees and prospective employees when they apply for a job (T.C.A. § 39-17-1803).

Jury Duty
Local governments are among the employers that must give employees time off with pay for jury services (T.C.A. § 22-4-108).

Child Support
A court may assign a municipal employee's income for child support. Any disciplinary or discharge action against the employee for this reason is prohibited (T.C.A. § 50-2-105).

Automobile Insurance
An accident by a municipal employee while driving a city-owned vehicle shall not increase that person's personal automobile insurance premiums (T.C.A. § 56-7-1108).

Political Activities by Municipal Employees
A local government employee has the same rights as other citizens of Tennessee to participate in political campaigns and to run for certain elected offices. A city employee has the right to take an active part in local and state campaigns while off duty. However, a city employee is not qualified to run for election to the local governing body unless otherwise authorized by law or local ordinance (T.C.A. § 7-51-1501). (For political activity by police officers, see T.C.A. § 38-8-351 and "Political Activity by Police Officers" earlier in this chapter.)

Convict Labor
Municipal offenders confined or subject to confinement in a county or municipal jail may be sentenced to public service work for the municipality. The statute exonerates the municipality, its officers and its employees from liability to the offender, his or her family, or other persons for acts of the offender if the municipality exercised due care in supervising the offender (T.C.A. § 41-3-107).

A city also may apply to the state Department of Corrections district work project coordinator for probationer labor for a specific work project. There is no liability for injury to a probationer so involved if due care was taken in his or her protection and supervision (T.C.A. §§ 41-9-101, *et seq.*). A city also may apply to the county community work project coordinator for county probationer labor on specific projects (T.C.A. § 41-9-202).

Under another statute, a city may apply to the commissioner of corrections to use convicts on public works projects, which the commissioner may allow if required conditions are met and the governor approves (T.C.A. § 41-22-127). A city's chief executive and the sheriff may make agreements for the city to use certain prisoners under city supervision "for such duties and manual labor as the municipality deems appropriate" (T.C.A. § 41-22-123(b)(2)). Convicts also may renovate substandard housing for low-income people (T.C.A. § 41-22-129) or perform work for a charitable or nonprofit corporation (T.C.A. § 41-22-148).

A juvenile court may order a child who is found delinquent to perform community service work for a municipality. T.C.A. § 37-1-131(a)(7) exonerates the municipality and its officers and employees from liability resulting from the juvenile's work if the municipality exercised due care in supervising the juvenile.

Payment of Professional Privilege Tax
T.C.A. § 67-4-1709 allows municipalities to pay the professional privilege tax for their employees subject to the tax.

Hiring Illegal Aliens
Any legal entity is prohibited from knowingly employing an illegal alien. Verification of status within 14 days of commencement of employment is a defense if the verification information was false or the employer used the federal work authorization verification service.

Local government officers and employees with reason to believe they have knowledge of a violation must file a complaint with the Department of Employment and Workforce Development (T.C.A. § 50-1-103).

Chapter Twelve

Economic Development

Industrial Parks and Buildings

The state code includes four provisions municipalities may use to develop industrial parks:

- Industrial Building Bond Act (T.C.A. § 7-55-101–116);
- Industrial Building Revenue Bond Act (T.C.A. § 7-37-101–116);
- Industrial Development Corporation Act (T.C.A. § 7-53-101–311); and
- Industrial Park Act (T.C.A. § 13-16-201–207).

Industrial Building Bond Act

The Industrial Building Bond Act is highly restrictive. Cities may issue bonds and construct industrial buildings under this act, but the bonds must be approved by a three-fourths affirmative vote in a referendum (T.C.A. § 7-55-107).

The building may be up to 10 miles from the city limits. The bonds may be secured only by rentals from the building, or the city may additionally pledge its full faith and credit.

To proceed with the project, the city must get a certificate of public purpose and necessity from the building finance committee in the Industrial Development Division of the Department of Economic and Community Development. The committee is empowered not only to issue the certificate but also to determine:

- The amount of bonds to be issued;
- The property to be acquired and acquisition terms;
- The expenditures that may be made in constructing and equipping the building; and
- The method of leasing the building.

The committee also has to require the maximum economically feasible use of solar heating systems and solar water heaters. If the city council refuses to follow all the committee's requirements, then any councilmember voting for the refusal is personally liable for any loss the city sustains (T.C.A. §§ 7-55-105–106).

Industrial Building Revenue Bond Act

The Industrial Building Revenue Bond Act is for issuing industrial revenue bonds not backed by the city's full faith and credit to build industrial buildings. It requires a three-fourths majority vote in a referendum (T.C.A. §§ 7-37-101–116).

Industrial Development Corporation Act

The Industrial Development Corporation Act allows creating a nonprofit corporation with broad powers to acquire and develop buildings and sites for economic development. Eligible projects for the corporation include everything from railroad lines to planetariums to certain tourist attractions.

The act prescribes a detailed process for creating the corporation. Three or more people who are both city electors and city taxpayers may obtain a charter of incorporation from the secretary of state after their application has been approved in a resolution of a city's governing body. The resulting corporation must have at least seven directors who are elected by the city's governing body for staggered six-year terms. The directors must be both city electors and city taxpayers. No director may be a city officer or city employee.

Typically, the industrial development corporation recruits a company to build a plant in the community. To fund the construction, the development corporation sells industrial revenue bonds. The company uses the bond proceeds to build the plant. However, on paper, the development corporation holds title to the plant. The company runs its plant and gives the corporation annual payments to cover the bond principal and interest.

Since the loss of the federal income tax exemption for this type of industrial development bond, some industrial development corporations have issued taxable industrial development bonds as a legal way to give property tax breaks to new companies.

A city may not back the corporation's bonds with its full faith and credit unless a certificate has been issued by the building finance committee of the Industrial Development Division of the state Department of Economic and Community Development, and a three-fourths majority approves the question in a referendum.

A city may give property, assets, and loans to the corporation. A city also may develop infrastructure (power lines, water, sewer, etc.) in an industrial park and sign leases with the corporation.

Properties held by the corporation are tax exempt. The city may delegate authority to the corporation to negotiate in-lieu-of-tax payments from businesses using the corporation-owned properties (T.C.A. § 7-53-305).

Disclosure of Economic Development Agreements; Conditions and Term of Agreements
All economic development agreements granting property tax incentives must be submitted in writing to the chief executive officer of each jurisdiction in which the property is located and to the state comptroller. The agreement must be submitted within 10 days after execution. To determine the exempt status of property subject to the agreement, the parties may petition the local and state boards of equalization for adjudication in the manner required for filing local assessment appeals (T.C.A. §§ 4-17-301, *et seq.*). Lessees must make annual reports to the state board of equalization on property leased and in-lieu-of-tax payments made (T.C.A. § 7-53-305(e)).

T.C.A. § 7-53-305(b) requires each agreement to have a cost-benefit analysis attached as required by the commissioner of economic and community development. Agreements are limited to 20 years, including extensions, unless both the commissioner of economic and community development and the comptroller make a written determination that the agreement is in the best interest of the state.

Tax Increment Financing and Economic Impact Plans for Industrial Development
T.C.A. § 7-53-312 authorizes and establishes procedures for using tax increment financing and economic impact plans for industrial development.

Regional Megasite Authorities
Municipalities and counties may create regional megasite authorities, which are similar to a regional industrial development corporation. A "megasite" must consist of at least 1,000 contiguous acres before an authority may be created. The authority is incorporated similarly to an IDC and governed by a board of directors on which the mayor of each participating municipality sits. The authority can issue bonds and may be delegated the authority to require in-lieu-of-tax payments by lessees. Restrictions on tax breaks and in-lieu-of-tax payments are similar to those for IDCs. The authority also may prepare economic impact plans. Any authority is subject to sunset review (T.C.A. §§ 64-6-101, *et seq.*)

Industrial Park Act
The Industrial Park Act permits cities to build industrial parks and related economic development facilities without passing a three-fourths majority referendum to approve bonds. Pledging the full faith and credit of the city requires a referendum. But with state approval, a city council may act on its own to issue bonds pledging fees, rents, tolls, and other charges connected with an industrial park (T.C.A. § 13-16-203(2)).

The city still is required to obtain a certificate of public purpose and necessity, but the building finance committee's role is expanded. The committee has to determine that "the project is well conceived and has a reasonable prospect of success" and that "there is a good probability that the project will be self-sustaining." In making the "self-sustaining" determination, the committee counts not only revenues from selling and leasing land in the park, but also utility revenues, increased *ad valorem* taxes, and other tax revenues resulting directly from the industrial park.

If the committee approves the project, then the city may secure its bonds with pledges of proceeds from sales of municipal property, any or all utility revenues, any or all tax revenues, and any other revenues from fees, rents, and charges. The committee has to approve both the amount of bonds issued and the security pledged.

The city may use eminent domain to acquire industrial park property but must obtain a certificate of public purpose and necessity from the Department of Economic and Community Development even if not borrowing money for the purchase. It may develop and operate an industrial park itself or turn the responsibility over to an organization, such as an industrial development corporation. It may join with other local governments to develop and operate its industrial parks (T.C.A. §§ 13-16-201–207).

A municipality also may issue bonds for construction of a business park as long as the development is larger than five acres, the bonded indebtedness will not exceed 10 percent of the assessed value of the property in the community, and the project is well conceived and will not become a burden to the taxpayers. The procedure for issuing such bonds is the same as that for an industrial park (T.C.A. § 9-21-105 (21)(B)(i), T.C.A. § 9-21-402(B)).

Industrial Highways

Municipalities are authorized to participate with the state and county in constructing and maintaining highways to secure an industrial site or park or to relieve related traffic congestion. The city will be responsible for the local share of the cost of such highways inside its jurisdiction. Any funds available to the city may be used for this purpose. The state Department of Transportation may use any funds not "specifically allocated by legislative action to other categories of highway construction and maintenance" (T.C.A. §§ 54-5-401–406).

Central Business Improvement Districts

There are four ways under two statutes that a city can create a central business improvement district. T.C.A. §§ 7-84-101–120, *et seq.*, authorize the creation of a central business district by ordinance upon:

- A petition signed by a numerical majority of the owners of real property who own two-thirds of the assessed value of the real property in the proposed district; or
- A city's own initiative by resolution.

The actual organizational details, including those associated with funding the district, must be created by ordinance (T.C.A. § 7-84-202, T.C.A. § 7-84-207). Written protest against the creation of the district by this method by the owners representing more than one-half of the assessed value of the property to be included in the district will block the creation of the district. However, the municipality can amend the protestors out of the district's boundaries.

T.C.A. §§ 7-84-501, *et seq.*, authorize creating a central business improvement district by ordinance passed by a majority vote of the city's governing body present and voting upon:

- Petition of a numerical majority of the owners of real property who own at least two-thirds of the assessed value of the real property in the proposed district; or
- The city's own initiative by resolution.

See previous note regarding the resolution and ordinance (T.C.A. § 7-84-511 and T.C.A. § 7-84-515). The creation of the district may be blocked, and the municipality can remove the block in the same manner that applies to a district created under T.C.A. §§ 7-84-101–120.

Under T.C.A. §§ 7-84-501, *et seq.*, the city creates a "district management corporation," which may be either a new or an existing body. The district management corporation acts as an advisory body "for the purpose of making recommendations for the use of special assessment revenues and for the purpose of administering activities within the district, the making of improvements within and for the district, and the provision of services and projects within and for the district." The extent of the district management corporation's powers is determined by ordinance. The city may contract with the district management corporation for services. The speakers of the Senate and the House each appoint to the district management corporation's board of directors an ex officio representative and senator from the House and Senate districts in which the majority of the central business improvement district lies. (An alternative arrangement is made for Shelby County.)

Both laws give cities broad powers to make various improvements in central business improvement districts, acquire improvements from private entities, and levy special assessments on property within the districts to finance the improvements. The laws also prescribe methods of assessment and allow the issuance of improvement revenue bonds. The authority to issue revenue bonds may be delegated to either the industrial development corporation or the public building authority (T.C.A. § 7-84-305).

Connecting CBIDs

The governing bodies of two or more municipalities may enter into an agreement to connect their central business improvement districts. The connected district is subject to all provisions that apply to a single district (T.C.A. § 7-84-209). See also T.C.A. § 7-84-103(3).

Miscellaneous

Appropriations to Advertise and Promote a City to Attract Tourism
Spending municipal funds for advertising to attract new industries and tourists to a community is authorized by T.C.A. § 6-54-201–203. A city may make general fund appropriations up to $30,000 annually ($60,000 if involved in a joint effort with a county, presumably $30,000 from each, but this is not stated explicitly). Additionally, a municipal governing body may levy a tax of up to 2 cents to create a special fund for such purposes. An advertising tax in excess of that amount requires a referendum upon a petition signed by 5 percent of a city's registered voters.

Convention Center and Tourism Financing
A municipality may create a tourism development zone in an area in which a public use facility is located or planned. The zone may not exceed one mile in radius from the facility, and the facility must have more than 250,000 square feet and cost more than $75 million. The benefit of creating a zone is that the city will receive from state and local sales and use taxes an amount equal to the incremental increase in such taxes resulting from the facility, except when the rate increases. The municipality may enter into structured lease agreements relative to these facilities. The allocation continues until the debt on the facility is paid off or it ceases to be used for public purposes. Exceptions and enhancements to this program have been added for particular facilities and for larger counties (T.C.A. §§ 7-88-101, *et seq.*).

Economic and Community Development Board
T.C.A. § 6-58-114 mandates that each county shall set up a board to advance economic and community development. All municipalities in the county are required to participate on this board, and the mayor or city manager of each municipality in the county is an ex officio member. The board must be established by interlocal agreement under T.C.A. § 5-1-113. The board is funded based on the per capita population of each participating governmental entity. This board may donate funds from participating governments to other public or nonprofit entities in the county for economic and community development purposes. When applying for any state grant, a city or county must certify its compliance with the requirements of this statute.

Appropriation of Funds for a Nonprofit Corporation
A city may appropriate money to any nonprofit charitable or civic organization "which provides year-round service benefitting the general welfare" (T.C.A. § 6-54-111). Nonprofit civic organizations are exempted from taxation pursuant to Section 501(c)(4) or (c)(6) of the Internal Revenue Code. Organizations falling in this category include chambers of commerce and other organizations that promote, maintain, and increase employment by promoting industry, trade, commerce, tourism, and recreation by inducing manufacturing, industrial, governmental, educational, financial, and other enterprises to locate in the city. Any appropriation under this statute must meet guidelines issued by the state comptroller's office.

Hotel/Motel Tax
Many cities fund tourism promotion programs with a hotel/motel tax. Home rule cities are authorized to levy a tax of up to 5 percent (T.C.A. §§ 67-4-1401–1425). General law cities (except those in certain counties, in which the municipality may levy the tax by ordinance passed by a two-thirds vote of the governing body) and private act charter cities must have special acts to authorize the tax. (See Chapter 7, "Municipal Revenues," for further discussion of this tax.)

Regional Tourism Funding
The state provides a $2 match for each $1 (up to $35,000 in annual local expenditures) spent on regional tourism promotion (T.C.A. § 4-3-2207(b)).

Private-purpose Utility Projects Prohibited; Exception
Cities are prohibited from constructing water and sewer projects for private purposes. Such purposes include any commercial project, commercial subdivision, private residence, or privately owned residential subdivision. It also includes constructing individual water and sewer lines beyond a meter that measures service or on private property where the municipality does not have an easement. But municipalities may do sewer work on private property when there is excessive inflow from rainwater or groundwater that causes overflows and creates health issues, and the owner agrees to hold the municipality harmless (T.C.A. § 7-35-401).

Parking Authority
In counties with a population of more than 50,000, a public corporation (designated a "Parking Authority")

may be formed by the county or a city to construct and operate off-street parking facilities. The authority is under the control of a board of not fewer than five directors appointed by the mayor or county executive with the governing body's approval. A governing body may amend the certificate of incorporation by resolution. If bonds extend beyond an authority's duration, the municipality shall assume their obligations. Revenue bonds with up to 40-year terms may be issued and additionally secured by mortgages on facilities and on-street parking meter revenues. This act is not applicable in counties with a metropolitan form of government (T.C.A. §§ 7-65-101–124).

Inner-city Redevelopment Districts
T.C.A. §§ 7-84-601, *et seq.*, authorize any municipality by ordinance to create a self-financing inner-city redevelopment district. These districts may not overlap CBIDs. The ordinance may be initiated by petition of owners of two-thirds of property to be included or by resolution of the governing body. The municipality may borrow money for public works improvements in the district and use special assessment revenues to pay it back. The authority to provide public works may be delegated to the governing body of the district.

Redevelopment Authority
Housing authorities may serve as redevelopment authorities. Such authorities are empowered to undertake urban renewal projects and issue tax increment bonds to finance redevelopment projects. Blighted property may be acquired, cleared, and assembled for redevelopment. Under tax increment financing, the new tax revenue resulting from a successful redevelopment project is earmarked for public investments that made redevelopment possible. County approval is required unless county taxes are exempted from the tax increment provisions (except in Davidson and Shelby counties) (T.C.A. §§ 13-20-202–216).

Local Development Authority: Industrial Development Loans
The Tennessee Local Development Authority has authority to issue notes or bonds whose proceeds may be used for loans to cities to finance constructing sewage treatment facilities, waterworks, correctional facilities, and resource and energy recovery facilities. The loan agreements are between the Department of Environment and Conservation and the city (T.C.A. § 4-31-101).

The state Funding Board and the Tennessee Local Development Authority are authorized to approve an application to the Department of Economic and Community Development for a loan of up to $250,000 to a city of less than 25,000 population or to a county with no city of more than 50,000 population. Each must have had an unemployment rate for 12 months higher than the state average or an average per capita income below the state average for the previous 12 months. The loan's primary purpose must be to increase the number of manufacturing jobs. It may be used for water and sewerage facilities, land acquisition, site preparation, extending utilities, road access, and environmental monitoring equipment (T.C.A. § 4-31-301).

Local Enterprise Zones
Home rule municipalities are authorized to create an enterprise zone management board with authority to designate enterprise zones. Home rule municipalities wanting an enterprise zone within their jurisdiction must apply to this board. To be designated an enterprise zone, an area must be in poverty and consist of underutilized or vacant lands. If a zone is designated, the local government may establish a nonprofit enterprise zone development corporation empowered to own property, solicit and accept grants, and make loans and grants. Various incentives can be provided that encourage enterprise zone development (T.C.A. §§ 13-28-201–211).

Courthouse Square Revitalization
The Courthouse Square Revitalization Pilot Project Act of 2005 allows one municipality in each grand division of the state that is the county seat of a county with a population of 120,000 or less to apply for designation as a courthouse square revitalization zone. The commissioner of finance and administration administers the program and designates the municipality. When a municipality is designated, sales and use tax revenue collected in the zone will be allocated to the municipality for use in the zone (T.C.A. §§ 6-59-101, *et seq.*).

Chapter Thirteen

Business Regulation

Adult-oriented Businesses

Three state laws regulate adult-oriented businesses:

- T.C.A. §§ 7-51-1101, *et seq.* (Adult-Oriented Establishment Registration Act of 1998). Counties are authorized (but not required) to adopt by a two-thirds vote the Adult-Oriented Establishment Registration Act of 1998. That act expressly preserves the right of municipalities to adopt and enforce "other lawful and reasonable restrictions, regulations, licensing, zoning, and other criminal, civil, or administrative provisions concerning the location, configuration, code compliance, or other business operations or requirements of adult-oriented establishments" (T.C.A. § 7-51-1121). The act defines and covers adult bookstores, adult mini-motion and motion picture theaters, adult cabarets, escort agencies, sexual-encounter centers, massage parlors, rap parlors, saunas, and similar businesses. The act prohibits adult businesses within 1,000 feet of any child-care facility, school, public park, residence, or place of worship, but it does not prevent local ordinances setting distance requirements. In any county that has adopted the act, such businesses must obtain a license from the county. The act prescribes the rules and regulations that adult-oriented businesses must follow, and the adult-oriented establishment board (created by the county) is empowered to adopt additional rules and to suspend and revoke the licenses of adult-oriented businesses. In addition, first offenders may be fined up to $500. A second or subsequent offense is a Class A misdemeanor. This statute was upheld in the case of *American Show Bar Series Inc. v. Sullivan County*, 30 S.W. 3d 324 (Tenn. App. 2000).
- Municipalities that disqualify persons with criminal records from operating or performing in these establishments are required to conduct a criminal records check on applicants through the TBI and FBI. The city must require two sets of fingerprints, which must be sent to the TBI. Costs must be paid by the city but may be added to the application fee (T.C.A. § 7-51-1122).
- T.C.A. § 27-9-111 makes mandatory the judicial review of decisions of boards and commissions that revoke, suspend, or deny permits or licenses required for engaging in adult businesses. The court must hear and decide the matter within 40 days of the date the court granted *certiorari*.
- T.C.A. § 57-4-204. This statute prohibits certain sexual and pornographic conduct in establishments that sell intoxicating liquor. Generally, the Alcoholic Beverage Commission is the agency designated to enforce the statute. However, the statute expressly provides that "Each county, city, or metropolitan government is empowered upon approval by a two-thirds vote of its legislative body to authorize its law enforcement officers to conduct investigations into alleged violations of subsections (a)-(d) [which contain the prohibited conduct], and such law enforcement officers shall report such violations to the commission for appropriate action by such commission" (T.C.A. § 57-4-204(e)).
- T.C.A. § 39-13-511. This statute prohibits public indecency, the definition of which includes various kinds of sexual activities. Its definition of "public place" includes streets, sidewalks, parks, beaches, and business and commercial establishments of various kinds. It preserves the right of local governments to regulate "any activity where alcoholic beverages, including malt beverages, are sold for consumption" (T.C.A. § 39-13-511(a)(6)). First and second offenses are Class B misdemeanors carrying a fine of $500. A third or subsequent offense is a Class A misdemeanor with a fine of $1,500 and a jail term of up to 11 months, 29 days.

Many municipalities also have ordinances regulating adult-oriented businesses. At both the state and local levels, the most successful approach to the regulation of such businesses generally has been based upon the regulation of their "secondary effects." (See U.S. Supreme Court cases *Renton v. Playtime Theaters Inc.*, 475 U.S. 41 (1986); *Barnes v. Playtime Theaters Inc.*, 501 U.S. 560 (1991); and *City of Erie v. Pap's A.M., tbda "Kandyland*," 130 S.Ct. 1382 (2000)). Competent legal advice should be sought and the federal and state cases interpreting the above and similar statutes in other jurisdictions should be read before a municipality adopts or enforces either a state law or municipal ordinance regulating adult-oriented businesses.

Alcoholic Beverage Businesses

Beer
A city may, by ordinance, prohibit beer sales within the city, or it may, by ordinance, prescribe regulatory measures not conflicting with state laws. These measures may include:

- Fixing a maximum number of permits;
- Restricting beer permittees to certain zones;
- Establishing distance regulations from residences, schools, churches, and other public gathering places;
- Establishing opening and closing hours; and
- Setting other rules to protect the "public health, morals, and safety."

One exception is found in T.C.A. § 57-5-109, which prohibits cities from denying a beer permit to a business based on proximity to a school, residence, church, or other place of public gathering if a permit had been issued to a business on that same location. The statute defines "on that same location" as being within the same parcel or tract.

To enforce these regulations, a city must establish a board to issue beer permits. The governing body may constitute itself as a beer board for this purpose. Applicants who meet all conditions prescribed by state law and city ordinances must be issued a permit. If they are refused, they may seek a trial *de novo* in a circuit or chancery court.

Municipalities may have different permit classes. For example, cities may allow on-premise consumption or restrict permits to package sales.

A city may prohibit sales at places where they would cause traffic congestion. Municipalities must prohibit sales to minors. A purchaser for off-premises consumption must provide satisfactory identification before being allowed to purchase. It is an exception to any criminal punishment or adverse administrative action, however, if a sale is made to a person who reasonably appears to be over 50 years old who failed to present acceptable identification (T.C.A. § 57-5-301 (a)(1)). No applicant or any person employed by an applicant shall have been convicted of any liquor law violation or a crime involving moral turpitude within the previous 10 years.

The permit of a retailer not in the responsible vendor program may be revoked or suspended by a beer board for failure to comply with any state law or city regulation, including the failure to pay the privilege tax and provide information required by the city. Appeal of such a decision may be taken to a circuit or chancery court. In lieu of revocation or suspension, a beer board may impose a civil penalty not exceeding $2,500 for each offense involving sales to minors, or it may levy a penalty not exceeding $1,000 for any other offense. Acceptance of a civil penalty by a city prevents the city from imposing any other punishment or penalty for that offense (T.C.A. §§ 57-5-101–109).

Beer boards are required to consider repeated violations of any local ordinance or state law related to prohibited sexual contact on the premises of adult-oriented establishments when considering suspending or revoking a permit (T.C.A. § 57-5-108(c)).

A city may not impose training or certification requirements on employees of a permittee if the employees have server permits issued by the Alcoholic Beverage Commission (ABC) (T.C.A. § 57-5-106(a)).

Beer retailers must post signs not smaller than 8.5" by 5.5" saying "IF YOU AREN'T 21 AND ARE IN POSSESSION OF BEER, YOU COULD LOSE YOUR DRIVER'S LICENSE."

Responsible Vendor Program[13]
A beer retailer may become a "responsible vendor" by paying nominal fees to the state Alcoholic Beverage Commission and providing certification training to clerks on the sale of beer to minors. A beer board may not suspend or revoke the permit of a responsible vendor based upon a clerk's illegal sale to a minor if the clerk is certified or within 61 days of initial hiring. The beer board must report the name of the clerk to the ABC within 15 days of finding a sale to a minor occurred. The beer board may not revoke the permit of a

[13]For more information about the responsible vendor program, see the MTAS publication *Responsible Vendor Act of 2006* by Josh Jones.

responsible vendor unless the vendor has at least two violations of selling beer to a minor in a 12 month period, unless the vendor knew or should have known about the illegal sale. Civil penalties for a responsible vendor are limited to $1,000 for an illegal sale by a clerk to a minor and other offenses (T.C.A. §§ 57-5-108 and 57-5-601, *et seq*.). A responsible vendor must post a sign on its premises warning customers STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER (T.C.A. § 57-5-301(a)(1)).

Intoxicating Liquors

Regulating the liquor industry is primarily a state function, but counties and cities may adopt regulations that do not conflict with those of the state. Package stores and the sale of liquor-by-the-drink must be approved by referendum, an option open to cities that have been incorporated for five or more years with a population of 925 or more people (except in four excluded counties). Banning such stores can likewise be accomplished by referendum (T.C.A. § 57-3-106, T.C.A. § 57-4-103).

T.C.A. § 57-4-101(a) lists several entities in which liquor-by-the-drink may be sold without a referendum. Among these are cities and counties that have elected to be a Tennessee River Resort District under T.C.A. § 67-6-103(a)(3)(F).

Applicants for a package store license from the state must first obtain a certificate signed by the mayor or a majority of the city governing body stating that:

- The applicant(s) to be in actual charge or the corporation officers (or those in control) have not been convicted of a felony within 10 years preceding the application date;
- A business site that meets all local requirements has been acquired; and
- The application conforms to any limit established on the number of retail licenses.

Failure to act within 60 days on an application for such certificates shall constitute approval. Cities and counties are authorized to control the location and number of licenses as long as they do not "unreasonably restrict the availability of alcoholic beverages" to their residents. An appeal of a certificate denial may be taken to a chancery court within 60 days (T.C.A. § 57-3-208). State law regulates hours during which sales may be made for consumption on the premises, but the ABC may expand those hours. Cities may opt out of or into the hour expansion adopted by the Alcoholic Beverage Commission (T.C.A. § 57-4-203(d)).

An elected or appointed public officer may not hold a liquor license or have any interest in any wholesale or retail liquor business (T.C.A. § 57-3-210).

T.C.A. § 57-3-707 allows servers in liquor-by-the-drink establishments to work 61 days after being hired without a server permit.

The law permits a city to impose the following annual privilege taxes on places serving drinks for consumption on the premises:

- $300 for a private club;
- $600 to $1,000 for restaurants, according to seating capacity;
- $1,000 for a hotel or motel;
- $1,500 for a premiere-type tourist resort; and
- Other amounts for several other classifications (T.C.A. § 57-4-301).

Cities may levy, by ordinance, inspection fees on retail liquor licensees (package liquor stores) based on wholesale liquor prices not exceeding 8 percent in counties with a population of less than 60,000 and in counties in which a premier tourist resort city is located, and not more than 5 percent in other counties. Population is to be taken from the most recent federal census (T.C.A. § 57-3-501).

State highway patrol and Alcoholic Beverage Commission officers and agents are empowered to help local law enforcement personnel enforce liquor statutes in cities that have not authorized liquor sales by local option elections (T.C.A. § 57-3-412(b)).

Fireworks

The state requires anyone manufacturing, distributing, selling, or displaying fireworks to have a permit issued by the state fire marshal. An application for a retailer's permit must be accompanied by a statement that selling fireworks within its county or municipality is permissible. The statement must be signed by the mayor or an appointee responsible for enforcing this requirement. It is illegal to sell any fireworks in a county or municipality where sale has been made illegal by ordinance or law. It also is illegal to ship fireworks for sale at retail into one of those municipalities or counties (T.C.A. §§ 68-104–105). The minimum age to purchase common fireworks is 16. Persons 16 or 17 who wish to buy these fireworks must show a state-issued ID or be accompanied by an adult. Municipalities may adopt the offense of selling fireworks to an underage person by reference (T.C.A. §§ 68-104-112 and 114).

In counties where sales are not prohibited, a city may by private act or ordinance regulate, restrict, or totally prohibit the sale of fireworks within the city (T.C.A. §§ 68-104–116). Retail sales of Class C common fireworks are prohibited in any county of more than 200,000 population except in any city therein with a population of 600 to 620 that permitted such sales before 1984 (T.C.A. § 68-104-112(a)(4)).

Display Fireworks
T.C.A. §§ 68-104-201, *et seq*., establish a state program of licensing display fireworks (Class B or 1.3) exhibitors and a certification program for display fireworks operators.

Exhibitors must carry a minimum of $1 million in general liability insurance for the benefit of any person injured by a fireworks display. Operators, or the people who actually shoot the fireworks, must be trained and certified.

A municipality performing a fireworks display need not be a licensed exhibitor but must have a certified operator supervising or discharging the display, show proof of insurance, and have the fireworks supplied by a licensed exhibitor.

Municipalities may enforce local regulations relating to displays of fireworks. Municipalities also may adopt the criminal provisions of the law as an ordinance violation. Local ordinances also may regulate the storage of these fireworks.

A display permit application must bear the "signed" approval of the chief supervisory official of the fire and police departments.

Cable TV/Telecommunications and Utility Franchises

Municipal governments may grant franchises to privately owned utilities that use public rights of way. The majority of city charters contain procedures for granting franchises. Most franchises require the utility to pay a fee to reimburse the community for using its streets and rights of way. Municipalities may, upon request by a cable company, grant a cable franchise (T.C.A. §§ 7-59-101, *et seq*.)

Cities under the general law modified city manager-council charter have authority to acquire, own, and operate cable TV systems (T.C.A. § 6-33-101). Under the 1992 Cable Television Consumer Protection Act, all cities may build and operate a cable system in competition with their existing franchise without granting themselves a franchise.

Municipally owned electric utility systems may construct and operate cable TV systems in their service areas. However, the cable operation may not be subsidized by the municipality or by the electric system, and it must pay tax equivalents using the same method prescribed for the electric system (T.C.A. §§ 7-52-401–407).

In addition to cable TV companies, cities have issued franchises to private companies providing gas, electric, water, steam, and public transportation. State law prohibits a company from acquiring the franchise or property of another company operating under a city franchise without the city's permission (T.C.A. § 6-54-109).

Municipalities probably do not have the authority to franchise a telephone/ telecommunications company or to collect a franchise fee based on the company's income. But, cities may require the firm to pay "police power" rent, i.e., a fee that covers the municipality's direct costs of the telephone/telecommunications

company's use of rights of way (T.C.A. § 65-21-103, T.C.A. § 65-21-203). (Also see *City of Chattanooga v. BellSouth Telecommunications*, (unreported) 2000 W.L. 122199 (Tenn. Ct. App. 2000).)

Statewide Cable and Video Service Franchising[14]
Notwithstanding the above discussion about local cable franchising authority, cable and video service companies have the authority to bypass a local franchise and obtain a state franchise under the Competitive Cable and Video Services Act (T.C.A. §§ 7-59-301, *et seq*.).

The act preserves local franchising but creates a new statewide franchise with immediate opt-in provision for incumbent franchise holders. An incumbent with an expired franchise can apply for a statewide franchise within 180 days of July 1, 2008. The award of a statewide franchise terminates any unexpired local franchise. Franchise fees, however, remain the same until the local franchise agreement would have expired, and the provider cannot reduce or terminate any services until another provider is providing services.

Statewide franchise applications are filed with Tennessee Regulatory Authority and forwarded to the affected local government. Providers then have 24 months to begin offering services. Statewide franchise fees are set at 5% of gross revenues. The application fee is $15,000. The state franchise has a 10-year term and is transferable. Local governments cannot request anything else of value from statewide franchise holders.

State franchises do not alter state law regarding local control of rights of way, local police power, or right to impose generally applicable taxes.

State franchise holders are subject to FCC customer service standards and are obligated to keep current PEG channels at no additional cost. New PEG channels are based on population levels.

Miscellaneous

Antiques Dealers' Records
Antiques dealers are required to keep records containing specified information for any item they purchase "exceeding the value of $50" and to preserve (no time period is specified, so presumably permanently) such records for inspection at any time by any city or county police officer (T.C.A. § 62-22-101). Dealers in antique, used, or scrap jewelry and precious metals must keep certain records and deliver daily to the police chief copies of logs containing specified information (T.C.A. §§ 38-1-201, *et seq.*).

Pawnbrokers
Cities may adopt state provisions regulating pawnbrokers and other regulations they "may deem right and proper." Cities may not regulate interest, fees, insurance charges, hours, types of pawn transactions, or license requirements, nor may cities make requirements other than those under the state statutes. A law enforcement official of a city may not charge a pawnbroker for receiving or processing daily reports or pawn tickets or any other information required by the law enforcement official. The state code intimates that even though a city may not license pawnbrokers, a city may suspend or revoke a pawnbroker's license if the owner, major stockholder, or managing partner is convicted of violating the state statute. Upon request, pawnbrokers must furnish law enforcement agencies with the names of suppliers from whom they bought merchandise for resale (T.C.A. §§ 45-6-201, *et seq.*). Pawn shop operators in Knox and Shelby counties must obtain the thumbprint or fingerprint of the pledger (T.C.A. § 45-6-209).

Closing-out Sales
A city may elect to regulate "going-out-of-business" sales by requiring licenses and verifying the authenticity of such sales (T.C.A. §§ 6-55-401–413). Failing to comply with municipal regulations of liquidation sales is an unfair or deceptive trade practice under T.C.A. § 47-18-104.

Fire and Burglar Alarms
The Alarm Contractors Licensing Act of 1991 prohibits municipalities and counties from offering services as an alarm system contractor except for facilities wholly owned by the municipality or county. Municipalities may provide monitoring and response service to alarm systems if:

[14]For greater detail on statewide franchising of cable and video service providers, see the MTAS publication *Competitive Cable and Video Services Act: Increasing Competition and Diminishing Local Authority* by Melissa Ashburn.

- No charge is made for the service;
- Using the local government service is not mandatory; and
- Response by law enforcement officials, firefighters, and other emergency personnel is not conditioned on using the service.

No municipality may enact any regulations relating to licensing alarm businesses after July 1, 1991. Any municipal regulation requiring certification or licensing of alarm businesses or their employees is superseded.

A municipality may impose a fine not exceeding $25 for each false alarm unless the false alarm is due exclusively to a violent act of nature.

A municipality may require alarm businesses and agents to register their names, addresses, and license certificate numbers. A city may not impose a fee or require an application for this registration (T.C.A. §§ 62-32-301, *et seq.).*

Fire Extinguisher Firms
Regulating fire extinguisher firms is exclusively a state function except that a municipality may require permits for installing fire extinguisher systems and require that the installation of such systems conform to applicable building codes and requirements (T.C.A. §§ 62-32-201, *et seq.*).

Junkyards
Restrictions have been imposed on junkyards located within 1,000 feet of an interstate or primary highway. They are enforced and implemented by the Tennessee Department of Transportation. "Junkyard" includes a place where 10 or more abandoned motor vehicles are stored and any place that stores, buys, or sells junk (T.C.A. §§ 54-20-101, *et seq.*), but it does not include recycling centers as defined in T.C.A. § 54-20-103(4) or solid waste facilities registered under T.C.A. § 68-211-106. Otherwise, the definition of "junk" includes a wide variety of materials. A municipality is empowered to enforce regulations at least as stringent as those established under this statute for city streets that are in the state highway system (T.C.A. §§ 54-20-103, *et seq.*).

Automobile Graveyards
For city streets that are not a part of the state highway system, a municipality is empowered by ordinance to license and regulate "any lot or place which is exposed to the weather" where more than five motor vehicles, not economically practical to make operative, are located (T.C.A. § 7-51-701).

Regulation of Taxicabs and Similar Vehicles
Municipalities are empowered to license, control, and regulate taxicabs by ordinance or resolution. The statute outlines the scope of this authority and extends to a municipality the full extent of antitrust immunity accorded to the state as sovereign under state and federal laws. Governmental entities in a county of 287,700 to 287,800 (Hamilton County) are exempted from this law. Governmental entities in counties with more than 500,000 population (Shelby and Davidson) also may regulate limousine, sedan, shuttle, and taxicab services (T.C.A. §§ 7-51-1001–1007). T.C.A. § 6-54-128 requires a criminal records check on cabdrivers through the TBI and FBI by municipalities in counties with over 100,000 population that choose to license and regulate persons operating vehicles for hire and disqualify those convicted of specified crimes.

Regulation of Towing or Wrecker Companies[15]
Federal law (49 U.S.C. § 14501(c)) restricts municipal regulation of towing and wrecker companies. Under the noted federal statute, which deregulated the motor carrier industry, including towing companies, it appears that municipalities may do only the following relative to towing and wrecker companies:
- Regulate the price of nonconsensual tows;
- Establish standards for towing businesses that perform work for the city itself as a market participant; and
- Regulate safety aspects of the towing business where this authority is delegated by the state.

[15]For municipal authority to regulate the commercial use of wheel immobilizers, see T.C.A. § 6-54-132 and Chapter 19 of this handbook.

All other business regulation of towing companies appears to be pre-empted. See *Petrey v. City of Toledo*, 246 F. 3d 548 (6th Cir. 2001) and *City of Columbus v. Ours Garage and Wrecker Service*, 122 S. Ct. 2226 (2002).

False Claims
T.C.A. §§ 4-18-101, *et seq.*, make any person or entity that makes a false or fraudulent claim against the state or any municipality liable for three times the amount of damages. In addition, the person or entity is liable for court costs of a civil action to recover these damages and for a civil penalty of not less than $2,500 nor more than $10,000.

Manufactured Homes
State law provisions regulating the installation of manufactured homes pre-empt any local ordinances that regulate their installation (T.C.A. § 68-126-412).

Price Gouging During States of Emergency
T.C.A. §§ 47-18-5101, *et seq.*, and 47-18-104 make it unlawful for businesses to charge excessive prices for essential goods during states of emergency. Local ordinances prohibiting and penalizing similar conduct are not pre-empted.

Limited License Plumbers
State law regulates limited license plumbers (plumbers who do less than $25,000 in total plumbing work). Municipalities may have stricter testing and experience requirements. The state law also makes other allowances for local regulation of these plumbers. The state law apparently does not apply in the 24th and 25th senatorial districts (T.C.A. §§ 62-6-401, *et seq.*).

Sport Shooting Ranges
Owners, operators, and users of a sport shooting range are granted protection from nuisance and other types of liability not involving bodily injury when the range complied with noise control ordinances in effect at the time the range began operation. For ranges that open for operation after July 1, 2004, this protection from nuisance liability does not apply until one year after the range begins operation (T.C.A. § 39-17-316).

Charitable Gaming
Municipalities may not regulate charitable gaming (T.C.A. §§ 3-17-111 and 39-17-659).

Tax Refund Loan Businesses
Municipalities may not regulate tax refund loan businesses (T.C.A. § 62-29-204).

Home Improvement Contractors
Home improvement contractors are regulated in T.C.A. Title 62, Chapter 6, Part 5.

Scrap Metal Dealers
T.C.A. §§ 62-9-101–112 regulate scrap metal dealers at the state level. T.C.A. § 62-9-105 purports to authorize local law enforcement officers to inspect scrap metals purchased by and the records of these dealers without a warrant during usual business hours, but this authority is constitutionally suspect. Under T.C.A. § 62-9-111, local governments, landfills, and solid waste processing facilities may sell any scrap metal lawfully attained by them. Payment to the governmental entity must be by check or money order and must be mailed. In addition, a governmental entity may register as a scrap metal dealer.

Chapter Fourteen

Environmental Quality

Solid Waste

Solid Waste Management Act of 1991

The Solid Waste Management Act of 1991 outlines a comprehensive process for dealing with Tennessee's municipal solid waste on a regional basis. Cities that collect and dispose of solid waste have a right to appoint representatives to the region's (single or multicounty) board. Through regional plans, regional boards have the authority to approve applications for new or expanded landfills or incinerators in their territory and to restrict waste coming in from outside the region (T.C.A. §§ 68-211-813–814, T.C.A. § 68-211-817).

The act authorizes the region to impose and collect a solid waste disposal fee. Funds from these fees are to be used to establish and maintain solid waste collection and disposal services, including convenience centers and collection centers for whole waste tires, lead-acid batteries, and used oil. Cities and counties must use a uniform solid waste financial accounting system developed by the state comptroller (T.C.A. § 68-211-835, T.C.A. § 68-211-866, T.C.A. § 68-211-874).

Solid waste needs assessments, first required by 1992, must be revised every five years.

All landfills accepting municipal solid waste must pay a surcharge of 90 cents per ton to the state. The surcharge applies only to Class I solid waste disposal facilities and incinerators (T.C.A. § 68-211-835).

The act makes it unlawful to deposit solid waste into the waters of the state and to burn solid waste except in accordance with state regulations. It also is unlawful to construct or alter a solid waste processing or disposal facility or to transport, process, or dispose of solid waste in violation of rules and regulations established by the commissioner of environment and conservation or the Solid Waste Disposal Control Board (T.C.A. § 68-211-104). The state also exercises general supervision and regulation over all solid waste disposal facilities in the state, including the authority to review and approve federal grants or loans to cities for constructing or modifying such facilities (T.C.A. §§ 68-211-105–109).

Funds in the solid waste management fund may be used for grants to municipalities with a Class I landfill without a liner and for using shredded tires for recreational purposes (T.C.A. §§ 68-211-832, 867).

Closed Trucks

Refuse, garbage, etc., must be hauled in a closed-body truck or covered securely with a tarpaulin. In addition, all trucks hauling litter to an energy recovery facility and having a gross weight of less than 16,000 pounds must carry the litter in an enclosed space unless the truck has a hydraulic lift system (T.C.A. §§ 39-14-501–503).

Resource Recovery Facilities

T.C.A. §§ 68-211-501–505 empower any city to construct and operate an "energy or resource recovery facility ... within its corporate limits or within the limits of the county wherein it is located," and a 1974 act authorizes state loans for such purposes. A 1976 act intending primarily to permit local governments to participate in a TVA-sponsored plan for using solid waste as fuel empowers cities and counties to join in any such enterprise. The act is sufficiently general to permit participation in any such plan, not necessarily only those sponsored by TVA. The act would apply to any facility with a primary objective of recovering energy and a secondary objective of recovering recyclable materials (T.C.A. §§ 7-58-101–110).

Contracts for using solid waste for resource and fuel recovery or among counties and cities for cooperative solid waste operations may not exceed 40 years (T.C.A. §§ 7-58-103–104).

Used Oil Collection Act of 1993
The Used Oil Collection Act allows the Tennessee Department of Environment and Conservation to make grants or loans to cities to establish and operate used oil collection centers. Grants and subsidies also may be available to local governments to buy equipment that burns used oil as fuel. In awarding the latter grants, priority will be given to local governments that have created used oil collection centers. The grants are funded by a 2 cents per quart fee on automotive oil, paid by distributors. The act contains extensive regulations governing used oil collection centers (T.C.A. §§ 68-211-1001, *et seq.*).

Hazardous Waste

Hazardous Waste Permit
When the state considers an application to permit a hazardous waste site within a municipality or within one mile of a municipality, the city council must vote within 90 days to accept, reject, or modify the application. The city must send the state a report that addresses a series of questions. The questions ask whether the facility:

- Minimizes incompatibility with the surrounding area and its effects on the value of the area;
- Minimizes the impact on traffic flow; and
- Meets zoning requirements for hazardous solid waste facilities.

Before issuing or denying the permit, the state commissioner of environment and conservation must affirm, reverse, or modify the decision of the local government (T.C.A. § 68-212-108).

Applicants for hazardous waste storage or disposal facilities must hold a public meeting and complete a community impact statement before submitting a permit application (T.C.A. § 68-212-108). T.C.A. § 68-212-105 makes it unlawful to place a new commercial hazardous waste facility closer than 1,500 feet to residential, day-care, church, park, or school property.

Hazardous Waste Plans and Reports
The Tennessee Hazardous Waste Reduction Act of 1990 requires hazardous waste generators to classify themselves as large or small, prepare hazardous waste reduction plans, and file annual reports with the state (T.C.A. §§ 68-212-301–312).

Superfund and Hazardous Waste Sites
The commissioner of environment and conservation is required to notify the register of deeds in each county in which property has been placed on the list of inactive hazardous substance sites. The register must record a notice that the property has been so listed. This notice effectively freezes any loan for development of the site until the environmental problem is addressed and the notice is removed.

Local governments are not liable for cleanup of hazardous waste sites if they acquire ownership through tax delinquency, bankruptcy, abandonment, or similar circumstances. This exemption does not apply if the government contributed to releasing hazardous materials or if liability has been otherwise adjudicated (T.C.A. §§ 68-212-101–302).

Local Air Pollution Regulations

The state is responsible for a comprehensive state program to minimize air pollution. Municipalities and counties may enact regulations that are not less stringent than the state's regulations, which prevail as long as a certificate of exception granted by the Air Pollution Control Board is in effect. Periodic review by this board is required to determine whether the exemption should be continued. Certificates are issued for periods not to exceed two years (T.C.A. § 68-201-115). Local air pollution regulations are not applicable to "any air contaminant source ... which burns wood waste solely for the disposition of such wood waste," but the constant presence of a person is required and the burn limited to 48 hours and to no more than twice in any 30-day period for wood waste burns within 200 feet of an occupied building if the burn is done by someone other than the occupant. For burns within 100 feet of an occupied building, an adult occupant must give written permission for the burn to occur. Stricter local ordinances control. (T.C.A. § 68-201-115(c)). The $25,000 per day state penalty also is applicable to violations of municipal regulations. Municipal penalties are cumulative and in addition to state penalties (T.C.A. § 68-201-116).

Miscellaneous

Boat and Marina Sewage
It is unlawful to operate a boat with a marine toilet that discharges untreated sewage into the waters of the state. Commercial boating facilities that house vessels equipped with toilets must provide facilities for sanitary pumping and disposal from the boats' holding tanks, or they must have an agreement with a marina that is so equipped (T.C.A. § 69-10-102, T.C.A. § 69-10-216(g)).

Underground Storage Tanks
Cities with underground storage tanks for petroleum must comply with state and federal monitoring and replacement requirements. The state Underground Storage Tank Board oversees enforcement of the state program and collects tank fees to pay for the program. The program establishes limits of financial responsibility for cleanup and third-party claims and establishes a voluntary registry for owners of an interest in a petroleum site. There also are certain restrictions and deadlines that must be met for reimbursement to be made from the UST fund. Failure to meet these restrictions and deadlines could make a city ineligible for reimbursement for a release of pollutants (T.C.A. §§ 68-215-101–130).

Pesticides
Municipalities are prohibited from regulating the sale and use of pesticides. Also prohibited is regulation of registration, notification of use, advertising, marketing, distribution, applicator training or certification, storage, transportation, disposal, disclosing confidential information, or product composition. The statute does not limit a city's authority to zone for storage or designate sites for disposal, regulate discharge to sanitary sewers, or implement a pest management plan required by the Safe Drinking Water Act. The state may enter into an agreement with cities with a population of greater than 250,000 to enforce the provisions of the Tennessee Insecticide, Fungicide, and Rodenticide Act (T.C.A. § 43-8-114–115, T.C.A. § 62-21-118, T.C.A. § 62-21-129).

Fertilizer
Municipalities may not regulate the registration, packaging, labeling, sale, storage, distribution, use, and application of fertilizer, except in Davidson, Hamilton, Knox, and Shelby counties (T.C.A. §43-11-125).

Caves
It is a criminal offense to deface or destroy caves and caverns or to force open a gate guarding a cave entrance (T.C.A. § 11-5-108).

Environmental Protection Fund
An environmental protection fund provides additional funding for the state Department of Environment and Conservation. Revenues from fees, civil penalties, and damages are used to improve the state's performance in permitting, monitoring, investigation, enforcement, and department administration.

Fees are charged to municipalities that submit applications or plans to build or modify municipal water, wastewater, and solid waste disposal operations. In addition, some annual maintenance fees are charged to municipalities for state oversight of these facilities (T.C.A. §§ 68-203-101–105).

Brownfields
T.C.A. §§ 68-212-224–226 create a voluntary brownfield redevelopment program. Under this program, the commissioner of environment and conservation may make grants and loans to local governments from federal and state funds for cleanup of disposal sites or brownfields.

Land Application of Wastewater
The commissioner of environment and conservation may allow otherwise illegal discharges of wastewater, including land application, under a conditional permit from the department (T.C.A. § 69-3-108(e)).

Chapter Fifteen

Health and Sanitation

Animals

Animal (Rabies) Control; Animal Euthanasia
Beginning July 1, 2005, state law provides for an anti-rabies program under the state Department of Health. Municipalities may enact local ordinances requiring registration of dogs and cats. Fees must be used in the rabies or animal control program.

Municipalities with their own rabies control programs are exempt from this law as long as the local program meets the minimum requirements of this law (T.C.A. §§ 68-8-101, *et seq.*).

T.C.A. §§ 44-17-301–303 govern the manner of destroying nonlivestock animals, including dogs and cats, in municipal animal shelters. However, T.C.A. § 63-12-141 requires the Board of Veterinary Medical Examiners to certify qualified persons as animal euthanasia technicians. That statute also allows only licensed veterinarians, licensed animal technicians who work under the supervision of a veterinarian, and certified animal euthanasia technicians to perform animal euthanasia. An animal that is euthanized by intracardial injection must first be tranquilized. Animals otherwise euthanized may, but do not have to be, tranquilized. Before an agency euthanizes an animal the agency knows or should know has an owner, the agency must hold the animal for three business days, except in emergencies.

T.C.A. § 44-17-303 requires that a veterinary technician also must have successfully completed a euthanasia certification course before administering euthanasia. It is a Class B misdemeanor for individuals or entities to imply that they have been granted a certificate by the Board of Veterinary Medical Examiners unless such a certificate has been granted. The Tennessee Spay/Neuter Law (T.C.A. Title 44, Chapter 17, Part 5) provides for the neutering of dogs and cats before or after adoption from an animal shelter.

Dogs at Large
T.C.A. § 44-8-408 makes it a crime for a dog to run at large. Punishment depends on the nature of the dog and the damage done by the dog. It is a Class C misdemeanor for a dog to run at large and cause no property damage or bodily injury. Instances in which there is property damage or bodily injury are greater crimes. There are several defenses listed in that law.

Chemical Capture of Dogs and Cats
T.C.A. § 44-17-601 allows approved agencies and certified chemical capture technicians to use sedation by drugs to capture dogs and cats when other methods of capture have failed. Chemical capture may be done using only Telazol or other drugs approved by the Board of Veterinary Medical Examiners. The drugs may be administered only by a licensed veterinarian or licensed veterinarian technician under the direct supervision of the veterinarian, or by a certified animal capture technician.

Under T.C.A. § 63-12-144 the Board of Veterinary Medical Examiners must issue a certificate to public animal control agencies authorizing chemical capture when the board determines the agency is qualified. The agency must apply, must submit a fee, and have a written protocol for chemical capture. Chemical capture technicians must be board certified. It is a Class B misdemeanor to engage in chemical capture without certification or to impersonate a chemical capture technician.

Miscellaneous

Septic Tanks
Subsurface sewage disposal systems are regulated by the state, with local (county) health officials responsible for enforcement. No subdivision plan may be approved locally or by the State Planning Office until it has been approved and a permit has been issued by the state Department of Environment and Conservation (T.C.A. §§ 68-221-401, *et seq.*).

Hazardous Chemicals
The Hazardous Chemical Right-to-Know Law of 1985 contains detailed and extensive requirements for

providing employees with full information concerning the hazards of any chemicals used in their workplace. Municipalities are included in the act's definition of nonmanufacturing employers. Compliance with the act does not affect an employer's liability regarding the health and safety of an employee, nor does compliance absolve the employer of taking action to prevent occupational disease under any other law. The law supersedes any municipal ordinance in effect on January 1, 1986, and no ordinance on this subject may be enacted after this date (T.C.A. §§ 50-3-2001, *et seq.*).

Slum Clearance; Dirty Lots
See Chapter 21, "Code Enforcement and Building Inspection."

Smoking Ban
Smoking is prohibited in most enclosed public places in Tennessee, including places of public employment. "No smoking" signs or the international "no smoking" symbol must be placed at every entrance to a public place or place of employment where smoking is prohibited (T.C.A. §§ 39-17-1801, *et seq.*).

Health Departments, Hospitals, and Mental Health Programs
Local health services are primarily state and county functions. Any city in a county with an established health department may cooperate in the maintenance of that department and levy taxes to pay its proportionate share (T.C.A. § 68-2-605). Cities also may participate in a multicounty district (T.C.A. § 68-2-701). T.C.A. § 68-9-504 requires city and other health officers involved in tuberculosis control to notify appropriate health authorities in other jurisdictions when an infected individual relocates from Tennessee.

Regulating local hospitals and other health care centers is a state function (T.C.A. §§ 68-11-201, *et seq.*). A hospital built with private funds may be maintained with public funds for up to five years, provided the contract specifically states that the facility is for public use. Cities also may contribute land or money for public welfare hospitals (T.C.A. §§ 68-11-501–507).

Within the limits of state appropriations, the commissioner of mental health and mental retardation, with approval from the commissioner of finance and administration and the state comptroller's office, is empowered to make grants to cities, counties, nonprofit corporations, or combinations thereof for constructing, maintaining, or operating mental health or mental retardation facilities, programs, or services (T.C.A. § 33-1-202).

Chapter Sixteen

Utilities

Municipal Authority to Operate Utility Systems

Municipalities acquire, own, and operate their water, sewer, electric, and gas systems under several general laws and their municipal charters. Generally, under each of the general law statutes, a utility system may issue revenue bonds, exercise eminent domain, and provide utility services outside the limits of its parent municipality. (Other laws that apply generally to utilities are found in the next section, "General Provisions.") The applicable statutes are:

1. T.C.A. §§ 7-34-101, *et seq.* The Revenue Bond Law authorizes municipalities to acquire, own, and operate water, sewerage, electric, and gas systems, along with parking operations. Under this statute, the utility:
    a. May not construct any public works within the corporate limits of another municipality without the latter's consent (T.C.A. § 7-34-105);
    b. Must charge municipalities the same rates for utility services that other customers are charged under similar conditions (T.C.A. § 7-34-108); and
    c. Must impose rates and charges that will ensure the system is self-supporting (T.C.A. §§ 7-34-114–115).

    The municipality may appoint a board to operate the utility system, or it may run the system itself.
2. T.C.A. § 7-35-401 authorizes municipalities to acquire, own, and operate water and sewer systems under a board of waterworks or sewer commissioners appointed by the municipality's governing body. Alternatively, the governing body may, by ordinance, serve as that board (T.C.A. § 7-35-406). Under this law:
    a. The city's governing body sets fees and charges for the utility system, which must be sufficient to support the system;
    b. A municipality that owns a gas system may transfer jurisdiction over the system to the board; and
    c. Municipalities must pay for utility services.
3. T.C.A. §§ 7-52-101, *et seq.*, the Municipal Electric Plant Law of 1935, requires the utility to be operated under a board of public utilities, which includes a member of the municipality's governing body (or the city manager) appointed by the mayor with the consent of the municipality's governing body. Alternatively, the city's governing body may function as the board of public utilities. Municipalities operating a waterworks, sewer works, or gas system may transfer jurisdiction over the system to the board of public utilities. Most of the municipal electric systems in the state operate under this law.

General Provisions

Limitations on Expenditures of Municipal Utility Revenue

Although T.C.A. § 7-34-115 is part of the Revenue Bond Law, it probably applies to all utility systems. It requires that "as a matter of public policy, municipal utility systems shall be operated on sound business principles as self-sufficient entities. User charges, rates, and fees shall reflect the actual cost of providing the services rendered" (T.C.A. § 7-34-115(a)). Under this statute, all municipal utility revenues must be spent on:

- Payment of operating expenses;
- Bond interest and retirement or sinking fund payments;
- Acquisition and improvement of public works;
- Contingencies;
- Payment of other operations, maintenance, and service cost obligations;
- Redemption and purchase of bonds;
- Creation and maintenance of a cash working fund;
- Payment to the general fund of a return on equity invested by the general fund to a maximum of 6 percent (the term "equity investment" is defined in the statute); and
- Upon the request of the governing body by resolution, in-lieu-of-tax payments on the property of the public works within the municipality not to exceed the amount of taxes payable on "privately owned property of a similar nature." (For resolution of conflicts between this provision of T.C.A. § 7-34-115 and other tax equivalency statutes, see the next section, "Utility

System Tax Equivalents.")

Any remaining utility revenues shall be used solely for rate reduction.

Municipalities may make covenants with the purchasers of bonds concerning the use and disposition of revenues as to the application order of such revenues and as to limitations on the amount of the return on the equity of investment or payment in lieu of taxes to the municipality.

The statute contains other information useful in explaining allowed expenditures of municipal utility revenue and procedures for spending the money under the above provisions. It also contains the penalty for the violation of the statute.

Sewer Work on Private Property
Municipalities may do work on sewer lines on private property behind a meter when there is excessive inflow from rainwater or groundwater that results in overflows and health issues when the owner consents and agrees to hold the municipality harmless (T.C.A. § 7-35-401).

Voluntary Contributions for Community Assistance
T.C.A. §§ 7-34-115 and 7-52-103 allow municipal electric and utility systems to accept and distribute voluntary contributions for charitable purposes. This may include programs in which the utility bill is rounded up to the nearest dollar. The contribution must be shown as a separate line item on the bill. Contributions are not considered revenue to the utility and must be used for community assistance and economic development.

Utility System Tax Equivalents
T.C.A. § 7-34-115 provides that, upon the request of the municipal governing body by resolution, the utility system shall pay to the municipality in-lieu-of tax payments on the property of the public works within the municipality not to exceed the amount of taxes payable on privately owned property of a similar nature. However, where that statute conflicts with the Municipal Gas System Tax Equivalent Law (T.C.A. § 7-39-401) or the Municipal Electric System Tax Equivalent Law of 1987 (T.C.A. §§ 7-52-301, *et seq.*), the latter statutes prevail. Those statutes contain complicated formulas for the payment in-lieu-of taxes to municipalities.

Eminent Domain
Several statutes empower municipalities to condemn land and property rights within and outside city limits for utility purposes (T.C.A. § 7-34-104, T.C.A. § 7-35-101, T.C.A. § 7-52-105, T.C.A. § 29-16-102, T.C.A. § 29-17-201). T.C.A. §§ 29-17-101, *et seq*., place restrictions on the use of eminent domain when there will be direct or indirect benefits to private entities or individuals. One of several exceptions from these restrictions, however, allows private benefits when "any interest in land necessary to the function of a public or private utility" is taken. The land cannot be taken primarily to convey the private benefit. T.C.A. § 66-27-207 places restrictions on the use of eminent domain to take condominium units.

Service Beyond Corporate Boundaries
Any city is empowered to extend "any utility service, specifically including waterworks, water plants, water distribution systems, and sewage collection and treatment systems" beyond its corporate boundaries, providing that proper charges are established "so that any such outside service be self-supporting." However, no city or other utility agency may "extend its services into sections of roads or streets already occupied by other public agencies rendering the same service so long as such other public agency continues to render such service" (T.C.A. § 7-51-401).

Metering Errors; Statute of Limitations
When a customer is overcharged or undercharged for electric, water, sewer, or gas services because of equipment malfunction, and the customer was unaware of the discrepancy, a municipality may not recover the undercharge or reimburse the overcharge for the period before 36 months from the date the error was discovered (T.C.A. §§ 28-3-301–303).

Utility Deposits
Unclaimed utility deposits and unclaimed utility refunds fall under the state's Abandoned Property Law, which imposes record-keeping and reporting requirements on a utility. The utility must attempt to notify the subscriber within 120 days of the commencement of the two-year waiting period before the deposit is presumed abandoned (T.C.A. § 66-29-106). The city may reclaim unclaimed utility deposits and monies from other abandoned property reported by the city under circumstances outlined in the Abandoned Property Law.

Theft of Utility Service and Damage to Equipment
It is unlawful to divert utility service or damage utility equipment. When a utility catches a customer stealing utility service, it has a right to collect three times the value of the stolen service and attorney's fees and costs. The city also may collect for theft of or damage to equipment, theft of meters, etc., by taking civil action to recover those losses and file liens against the property served to enforce the collection. To make the liens valid if the property is sold, the utility must follow procedures prescribed in T.C.A. §§ 65-35-101, *et seq.*

A violation of T.C.A. § 65-35-102 also is a violation of T.C.A. § 39-14-104 (theft of services) (T.C.A. § 65-35-105). T.C.A. § 39-14-411 prohibits damage to or interference with utility lines, fixtures, and appliances. The civil remedies and criminal penalties imposed by the criminal statutes are mutually exclusive (T.C.A. § 65-35-106).

Records
For information on utility records that are confidential and not subject to public disclosure, see Chapter 5, "Sunshine Law and Public Documents." For more information on precautions relative to identity theft, see the MTAS publication *Model Identity Theft Policy and FACTA Compliance* by Josh Jones.

Underground Utility Damage Prevention
The Underground Utility Damage Prevention Act of 1978 prescribes a procedure for recording underground facilities (communications, electricity, gas, petroleum, hazardous liquids, water, steam, and sewerage) with each county's register of deeds and giving notification of intended excavation or demolition. The act applies to state and local governments.

Before digging on public property, public rights of way, private easements, or within 100 feet of the edge of pavement of a street or highway, the digger must give no fewer than three and no more than 10 days of advance notice to any entity that has filed a record with the register of deeds.

To help manage this notification process, the state's utilities joined to create Tennessee One Call. The digger can meet notification requirements by making a single telephone call (800-351-1111), and the One Call service notifies utilities with underground facilities in the area. Municipalities are encouraged to join and participate in the Tennessee One Call organization for which there is no charge. However, if the digger complies with the act, it prohibits utilities that suffer damage resulting from not joining the One Call service from recovering damages from the excavation.

A violation of this act by a digger is a Class A misdemeanor punishable by a $2,500 fine or 48 hours in jail (T.C.A. §§ 65-31-101, *et seq.*).

Water Losses
The Water and Wastewater Financing Board may issue rules defining excessive water losses by public water systems and investigate systems with excessive losses and require them to reduce water losses to acceptable levels.

The comptroller must within 60 days after an audit is filed showing excessive losses file the audit with the Water and Wastewater Financing Board. If the water system fails to take appropriate actions to reduce losses, the board may petition the chancery court to require these actions.

Public water systems must include in their annual audits the annual average unaccounted-for water losses in the manner prescribed by the comptroller.

Additional Water and Sewer System Provisions

State Oversight
Public water supplies and sanitary sewerage systems are subject to supervision by the state Department of Environment and Conservation. Such supervision includes approving construction plans, examining water samples, and enforcing regulations regarding operating and maintaining such systems. State approval of construction or other changes to the public water supply and sewage systems is not required if the state has certified that local approval under local standards is sufficient to safeguard the public health (T.C.A. §§ 68-221-101–108).

Financial Oversight
The financial condition of municipal water and sewer systems is monitored by the Water and Wastewater Financing Board in the state comptroller's office. Board members, appointed by the governor, hear cases brought by the comptroller's office. Generally, water or sewer systems that have defaulted on a debt, have three consecutive years of operating deficit, or have retained earnings deficits in any one year will be referred to the board. However, in determining whether to file a report with the board, the comptroller is not to consider depreciation expenses if the water or wastewater system has a total equity at least four times greater than total debt. Several other exceptions apply. The board has broad powers to effect the adoption of user rates, issue subpoenas, and so forth (T.C.A. §§ 68-221-1008–1010).

Plant Operator Certification
The Water Environmental Health Act makes it unlawful to operate a water supply system, wastewater system, water treatment plant, wastewater treatment plant, water distribution system, or wastewater collection system unless the operators in direct charge have been certified as competent by the commissioner of environment and conservation. A five-member board established by the act is charged with adopting rules and regulations to govern the program, and the commissioner issues certificates.

All operators are encouraged to be certified, but certification is required of only one operator in charge of each system or plant. One operator may supervise two or more nearby systems when his or her work time can reasonably be so divided. Annual renewal of certificates is predicated on payment of fees and meeting any continuing education or experience requirements established by the board. A procedure is provided for revoking a certificate. Each day in violation subjects a city or other responsible agency to a Class C misdemeanor and a civil penalty of up to $10,000 (T.C.A. §§ 68-221-901–915).

Minimum Sewer Use Rates
To qualify minimum base rate charges paid by all sewer users as deductible items against an individual's federal income tax, a 1977 act declared such charges a tax. However, the Internal Revenue Service ruled that this tax did not change the charges' status as user fees, and they are not deductible (T.C.A. § 7-35-414).

Safe Drinking Water
Water pipes and solder used in water systems and plumbing must be lead free. Each water supplier must identify and notify all persons whose drinking water may be contaminated with lead (T.C.A. § 68-221-720).

Water Withdrawals
The Tennessee Water Resources Information Act (T.C.A. §§ 69-8-301, *et seq.*) requires people, including local governments, that withdraw or propose to withdraw 10,000 or more gallons of water daily from surface or groundwater sources to register the withdrawal annually with the Department of Environment and Conservation. This does not apply to emergency or agricultural withdrawals.

Noncompliance with Drinking Water Regulations
Public water systems that are not in compliance with current primary drinking water regulations must notify the state Division of Water Supply within 24 hours of discovery and provide public notice (T.C.A. § 68-221-708).

Untrue Statements About Water
Firms selling domestic water-softening or filtration devices sometimes attempt to boost their sales by advertisements questioning the safety or quality of public water supplies. It is unlawful to make certain untrue representations connected with selling, leasing, renting, etc., water treatment devices (T.C.A. §§ 47-18-1201–1203).

Watershed Districts
Watershed districts have broad powers. They are authorized to conserve soil and water resources, contract for constructing public works projects, acquire land, promote and protect public health, take fire-prevention steps, acquire water rights, distribute or sell water for irrigation or other purposes, provide recreational facilities, etc. The exercise of eminent domain by watershed districts requires approval of the local government in which the property in question is located (T.C.A. §§ 69-7-101, *et seq.*).

Mandatory Tap-on
Any city that has issued bonds secured by sewer revenues is empowered to require connection to an available sewer and, after a 30-day notice, discontinue water service to compel compliance (T.C.A. § 7-35-201, T.C.A. § 68-221-209).

Energy Acquisition Corporation Authority Relative to Water Meters
An energy acquisition corporation may install, read, maintain, and remove water meters for any municipality (T.C.A. § 7-39-302(17)).

Cross-connections Prohibited
Public water systems must implement an effective program to eliminate or control cross-connection hazards. A cross-connection could permit unsafe or questionable water or other substances to flow backward into the water supply lines (T.C.A. § 68-221-711 (6)).

Sewer Lateral Maintenance
To control sewer inflow and seepage, cities may require the owner, tenant, or occupant of each land parcel to properly maintain the portion of a sewer connection located on the private property. Cities may cut off water service if the customer fails to make repairs after being notified to do so (T.C.A. § 7-35-201(2), T.C.A. § 68-221-209).

Water Pollution Control Permits and Pretreatment Programs
Federal EPA regulations require municipal sewage treatment plant operators to establish programs requiring businesses and industries discharging into the city sewers to pretreat their effluent to meet the sewer plant's treatment standards. The state code gives cities authority to administer pretreatment programs and assess civil penalties of up to $10,000 per day for violations (T.C.A. §§ 69-3-101, *et seq.*).

A municipality that applies for a permit under T.C.A. Title 69, Chapter 3 has these rights:

1. Right to assistance from the Department of Environment and Conservation in understanding regulatory and permit requirements;
2. Right to know the projected fees for review of applications and how any costs will be determined and billed;
3. Right to access, via the department's Web site, complete and clearly written guidance, opinions, and department policies explaining the regulatory jurisdiction and requirements;
4. Right to timely completeness determinations for applications. Absent extraordinary circumstances, the commissioner will notify the applicant within 30 days that the application is complete or of the existence of any deficiencies;
5. Right to timely decision. Aquatic Resource Alteration Permits will be issued or denied within 90 days. Reissuance of National Pollutant Discharge Elimination System permits will be issued or denied within 180 days. New or modified National Pollutant Discharge Elimination System permits will be issued or denied within 365 days;
6. Right to appeal to the board any permit review time limits that have been violated for good cause; and
7. Right to know who will be reviewing the application and the time required to complete the full review (T.C.A. § 69-3-141).

Loan Programs
The state is authorized to make repayable grants to municipalities for constructing sewage treatment works based on the unobligated amount of the municipality's annual state-shared taxes (T.C.A. § 68-221-202).

T.C.A. §§ 68-221-1001, *et seq.*, created a self-sustaining, low-interest, revolving loan program for wastewater facility construction. The program is administered by the Department of Environment and Conservation's Division of Community Assistance and the Tennessee Local Development Authority. (See Chapter 8, "Capital Funds.")

Combined Billings
A city that has both a sewer system and a water system is authorized to combine water and sewer bills (if the contractual obligations of water revenue bonds are not impaired) and to enforce the payment of both charges as a unit, including discontinuance of water service (T.C.A. § 7-35-201(3)).

Bonds for Self-contained Wastewater Systems
The Tennessee Regulatory Authority must require the posting of a bond or other security for a public utility providing wastewater service or for a particular project by such a utility. The purpose of the bond is to ensure the proper operation of the utility or project. The TRA establishes the amount of the bond (T.C.A. § 65-4-201).

Additional Provisions for Electric, Gas, and Other Fuel Systems

Energy Production and Landfill Methane
Any municipality is empowered "to construct, own, operate, or maintain – within its corporate limits or within the limits of the county wherein it is located – an existing or planned energy production facility or facilities," including acquiring easements or other appurtenances for transporting or transmitting energy. Such a facility may use "fossil or other fuels" or solid waste. Creating a monopoly by ordinance is specifically authorized, provided the ordinance is first reviewed and approved by the state Department of Environment and Conservation. Annual reports about the monopoly must be made to and reviewed by this department (T.C.A. §§ 7-54-101, *et seq.*).

The Landfill Methane Development Act allows any municipality to construct and operate a facility for the preparation of landfill methane for transportation and as a substitute for natural gas (T.C.A. §§ 65-28-201, *et seq.*).

Averaging Bills
Any utility providing electricity, natural gas, or other fuel to more than 15,000 residential customers must permit bill payment on a monthly averaging basis. Every customer has the option to use such a plan (T.C.A. §§ 65-33-101–106).

Utility Relocation for Highway Construction
Under the common law, utilities using municipal streets may be required to remove or relocate those utilities from those streets at their own expense. With respect to state highways, however, T.C.A. § 54-5-804 authorizes the Department of Transportation, subject to funding, to reimburse public and private utilities the full costs of relocating caused by state road projects.

To qualify, the utility must:

- Comply with T.C.A. § 54-5-854(b), including preparing and submitting to the department the utility's relocation plan, its cost estimate, and schedule for completing the relocation within specified allowed times.
- Enter into a written agreement with the commissioner to include the relocation costs as a part of the department's highway construction contract, OR enter into an agreement that the utility will remove all facilities that the department wants moved before the department lets the construction contract. The utility will be reimbursed for the cost of the relocation work it has undertaken if the department does not undertake the project within a specified time.

The utility will be responsible for inspecting all phases of the relocation to ensure compliance with all specifications and safety codes.

The department will make no reimbursement until the commissioner is satisfied that the relocation has been performed in accordance with plans and the schedule of calendar days approved by the department.

This section requires the utility to reimburse the department to the extent the department is not compensated from federal funds for the relocation costs.

The utility management review board administers a state-funded loan program to help local governments and certain nonprofit businesses relocate utilities in the path of highway construction projects. Such loans are provided for up to 15 years and are interest free for the first five years. The utility management review board requires the borrowing utility to establish user fees sufficient to repay the loan and interest (T.C.A. § 7-82-701, T.C.A. § 67-3-617(j)(1)).

Utilities that are relocating because of a state highway project must make monthly progress reports to the Tennessee Department of Transportation (TDOT) and other utility owners. Reports made at preconstruction meetings between the contractor and TDOT will be sufficient to meet this requirement even if the meetings are not held monthly (T.C.A. § 54-5-854).

Utility Districts

Creating and Expanding Utility Districts
Most utility districts created under T.C.A. §§ 7-82-101, *et seq.*, provide water and sometimes sewer service. However, they may be empowered to provide natural gas, bottled gas, police, fire, garbage, street

lighting, park, transit, chemical pipeline, and cable TV services.

State law establishes procedures for creating or expanding a utility district. At least 10 days prior to a hearing on a petition to create a utility district, the county executive must send by registered mail a notice of the hearing to the mayor or other chief executive officer of any city that has a boundary within five miles of the proposed district's boundary if the city has a population of more than 5,000 or within three miles if it has a population of less than 5,000. The notice also must be sent if any city, regardless of size, has "any water, sewerage, or gas service facility" within three miles of the proposed district's boundary. At the hearing, the city may make known its intention of serving the area, whereupon the county executive must give the city 60 days to file its specific plans for doing so. When such plans are filed, the county executive must determine a reasonable time (which he or she may later extend) for the city to provide such service, a decision that may be appealed by either party to circuit court. The utility district may then be created minus the area to be served by the city or without authority to duplicate the city's service.

A similar procedure is provided for extending service facilities by existing utility districts, with priority given to a city within the same mileage limitations as above. The county executive likewise determines a reasonable time for the city to provide the service, which is subject to appeal.

The statute also provides a procedure for consolidating two or more utility districts.

Acquisition of Utility District by Municipality
T.C.A. § 7-82-202(f) provides a means for a municipality to acquire a utility district. The acquisition must be preceded by a petition of the governing body of the utility district, following which the county executive handles the petition in the same manner as a petition for the creation of a utility district is handled. If the county executive determines that the municipal acquisition of the utility district serves the public convenience and necessity, the utility district is dissolved and all its property is transferred to the municipality. The former utility district must be operated by the municipal governing body, separately from any other municipal utility. If the area served by the former utility district is outside the limits of the municipality, the municipal governing body must, by ordinance, appoint an advisory committee consisting of either the former commissioners or residents and customers of the utility district.

Although this statute provides that the former utility district must be operated by the municipality as a separate department, it also provides that "When the former utility district ceases to be a separate department and is merged with the other utility services of the municipality into one utility system, such advisory committee may be dissolved. No portion of such utility district shall be made a part of the municipal utility service without consideration being paid to the department composed of such utility district." It is not clear how the internal conflict in the statute would be resolved.

Expansion of Cities into Utility District and Electric Cooperative Service Areas
Things become more complicated when a city is expanding as it must contend with both state and federal restrictions. The state code says a city may not extend its utility service within the boundaries of a utility district "... unless and until it shall have been established that the public convenience and necessity requires other or additional services ..." (T.C.A. § 7-82-301). Apparently, any additional service by either public or private providers is required to be supported by a certificate of convenience and necessity issued by the county mayor. [See *West Wilson Utility District of Wilson County v. Atkins*, 442 S.W.2d 612 (Tenn. 1969); *Consolidated Grey-Fordtown-Colonial Heights Utility District v. O'Neill*, 354 S.W.2d 63 (Tenn. 1962); *Pace v. Garbage Disposal District of Washington County*, 390 S.W.2d 461 (Tenn. App. 1965); *Chandler Investment Co. v. Whitehaven Utility District*, 311 S.W.2d 603 (Tenn. App. 1958)].

When a city annexes part of a district's territory, the state code gives the city power to take over the utility district's facilities in the annexed area upon payment of an agreed amount of compensation and under agreed terms, or as determined by arbitration. If so much of a utility district is annexed that operating the remainder outside the city is economically unfeasible, a city probably would have to choose between taking all of the district or none of it (T.C.A. § 6-51-111).

However, 7 U.S.C. § 1926(b) and court decisions interpreting this federal statute limit this state grant of power. Almost all utility districts built rural water lines funded with Farmers Home Administration (FmHA) loans. 7 U.S.C. § 1926(b) has provisions protecting the borrowing district's ability to pay those loans back to FmHA. Courts have interpreted these provisions to give a district an absolute ability to refuse to transfer utility service rights to a municipality that annexes part or all of its service area.

A city incorporated after January 1, 1972, must hold a referendum before it can take over utility service from a utility district (T.C.A. § 6-51-301).

The taking of facilities owned by an electric cooperative is subject to special rules regarding compensation of the co-op (T.C.A. § 6-51-112). A utility district may act jointly in carrying out its powers with a county, city, or other utility district and may contract jointly with the state or federal government or any agency thereof (T.C.A. § 7-82-304(11)).

Utility Management Review Board
A utility management review board, appointed by the governor, advises utility district boards of commissioners on utility management. Financially distressed utilities are reported to the board by the comptroller's office. The board has broad powers to adopt rates, study consolidating utility districts, hear customer complaints, and review and comment on the creation and modification of utility districts' boundaries (T.C.A. §§ 7-82-201–202, T.C.A. §§ 7-82-701–804).

Franchises[16]

Private Utilities Franchise
Privately owned and operated utilities are subject to regulation by the Tennessee Regulatory Authority. A franchise granted by a city to such a utility must first be approved by the authority. The authority may hear appeals on regulatory measures imposed by cities. The authority may not issue a certificate of convenience and necessity to a second company for service in the same area unless it first determines that existing services are inadequate. A city may declare by ordinance that public necessity requires a competing utility (T.C.A. § 65-4-107, T.C.A. § 65-4-108, T.C.A. §§ 65-4-201, *et seq.*).

Consent to Transfer of Franchise
No public utility may acquire the franchises or property of another utility company serving a city without the city's "permission and consent, expressed officially in writing ... and then only upon such terms and conditions as the said municipal government may prescribe" (T.C.A. § 6-54-109).

Power Lines and Pipelines in Rights of Way
Electricity, gas, and oil suppliers are authorized to place lines, wires, and pipes as needed along city streets, lanes, and alleys "after having first obtained permission from the governing authorities thereof" (commonly referred to as a "franchise"). Excavations must be made "in such manner as to give the least inconvenience to the public, and shall be replaced with all possible speed by and at the expense of the corporation in as substantial manner as found before being excavated" (T.C.A. § 65-22-103).

Telephone Lines
T.C.A. § 65-21-101 provides phone companies the following privileges: Telegraph and telephone corporations may construct a telegraph or telephone line and erect the necessary fixtures along, over, or under the line of any public highway or the streets of any town or city; across, over, or under rivers or any land belonging to the state; or along, across, or under county roads and also the lands of private individuals. This may be done under the general law authorizing condemnation of right-of-way easements for works of internal improvement, as set forth in T.C.A. § Title 29, Chapter 16, but the ordinary use of these public highways, streets, or county roads may not be obstructed or the navigation of waters impeded.

T.C.A. § 65-21-103 gives municipalities the following powers regarding phone companies: "While any village or city within which said line may be constructed shall have all reasonable police powers to regulate the construction, maintenance, or operation of said line within its limits ... yet no village, town, or city shall have the right to prevent said company from constructing, maintaining, and operating said line within said village, town, or city, so long as said line is being constructed, maintained, or operated within said village, town, or city, in accordance with said reasonable police regulations."

Authority to Offer Telecommunications, Video, Internet, and Like Services
A municipal electric system is permitted to provide telephone, telegraph, and telecommunications services; dedicate a reasonable portion of the electric plant to telecommunications services; and lend funds to provide for working capital. The funds must be lent at not less than the highest rate then earned by the municipality on invested electric plant funds (T.C.A. §§ 7-52-401, *et seq.*).

The system must make tax equivalent payments relative to telecommunications services the same as for

[16]For a discussion of cable TV and telecommunication franchises, see Chapter 13, "Business Regulation," in this handbook.

electrical services. In addition, the municipal system may not provide telecommunications services in the area of an existing phone cooperative with fewer than 100,000 lines and is subject to regulation by the Tennessee Regulatory Authority (T.C.A. §§ 7-52-401, *et seq.*).

An amendment to the law now allows electric systems to provide cable TV, two-way video transmission, Internet services, and other like systems. Municipalities may not do this in areas where a private cable provider serves 6,000 or fewer customers and must file a business plan with the comptroller's office prior to beginning operation (T.C.A. § 7-52-601).

Under certain conditions, a municipality may enter into joint ventures to provide telecommunications and cable TV services (T.C.A. § 7-52-103(c)-(d)). (See Chapter 13, "Business Regulation.")

Miscellaneous

Energy Acquisition Corporations
The Energy Acquisition Corporation Act, contained in T.C.A. §§ 7-39-101, *et seq.*, authorizes municipalities to establish energy acquisition corporations. These corporations have extraordinarily broad powers to acquire and operate gas- and electricity-producing properties under various arrangements prescribed by the act, including the power to issue bonds for those purposes. Municipalities are authorized to lend money to and enter into other financial arrangements with such corporations. The structure and powers of energy acquisition corporations are prescribed in the act.

T.C.A. § 7-39-302(a)(12) requires engineering services provided by an energy acquisition corporation to be in compliance with T.C.A. § Title 62, Chapter 2.

Electrical Safety Code for Supply Stations
T.C.A. § 68-101-104 adopts the August 1, 2006, edition of the American National Standard Safety Code (for supply stations and lines, overhead and underground electric-supply and communications lines, and work rules governing their construction and operation.)

Oil and Gas Exploration
Municipalities are authorized to undertake oil and gas ventures. Cities may prospect, drill, mine, produce, treat, and transport natural gas, oil, and mineral byproducts (T.C.A. § 6-54-110).

Chapter Seventeen

Public Safety

Fire Protection

State Recognition and Local Approval Required
T.C.A. §§ 68-102-301, *et seq.*, require state recognition before a firefighting organization may operate or raise funds as a fire department. The state fire marshal enforces this law and sets standards and qualifications for becoming and remaining a fire department. Certificates of recognition are valid for three years, after which the fire department must apply for a renewal. T.C.A. § 68-102-306 provides that no new fire department may be created or recognized without the approval of the local governing body.

Volunteer Fire Departments
An 1831 law authorizing "private fire companies" to be formed by "any number of persons resident within a municipality" can be used to create a volunteer fire department (T.C.A. §§ 7-38-101–104). An interesting (but probably invalid) provision states that members of such private fire companies and members of departments in incorporated cities and towns are exempted from "military duty in time of peace and from serving on juries" (T.C.A. § 7-38-104).

Hazardous Material and Natural Disaster Calls Outside the City
Cities incorporated under the general law city manager-commission charter (T.C.A. §§ 6-18-101, *et seq.*) may allow their fire departments to answer hazardous materials and natural disaster calls, regardless of where the emergency exists (T.C.A. § 6-21-703).

Investigating Fires; Demolishing Buildings
A fire chief, fire marshal, or mayor of a city without a fire department shall be designated an assistant to the commissioner of insurance to investigate fires, and a report of each investigation is required on prescribed forms. Such an assistant may order the demolition and removal of irreparable structures at the expense of those responsible for them. In cities with no fire marshal, a fire marshal from another local government may be an assistant to the state commissioner on behalf of that city.

Any officer authorized to conduct fire inspections may order any building removed or repaired that the officer finds is a fire hazard or otherwise inherently dangerous to the public. This finding may be made if:

- Repairs are lacking;
- Fire escapes, alarms, or fire extinguishing equipment are insufficient; or
- Any other dangerous or defective condition renders the property prone to fire (T.C.A. §§ 68-102-101, *et seq.*).

Firefighter Training and Certification
T.C.A. §§ 4-24-101, *et seq.*, establish a commission on firefighting personnel standards and education under the Department of Commerce and Insurance. Comprising nine members appointed by the governor (the commissioner of education is a nonvoting, ex officio member), the commission makes recommendations to the governor and General Assembly on municipal firefighting issues and:

- Certifies fire training instructors;
- Certifies training and education programs prescribed by the commission;
- Recommends and approves curricula for advanced courses and seminars in fire science, fire engineering, and training in institutions of higher learning or other state-supported schools;
- Establishes classifications based on training and education for full-time or volunteer firefighters who pass the certification examination given by the commission;
- Certifies individuals who are not currently firefighters but who complete an approved recruit training program; and
- Administers the supplemental income bonus provided for in the statute.

Various provisions of the statute elaborate on the commission’s powers in the above areas.

Municipal firefighters who successfully complete 40 hours of in-service training (appropriate to their rank and the size and location of their fire departments) are eligible for an educational incentive of $600. T.C.A. § 4-24-202(c) requires that firefighters serving in the military receive their incentives if the military service prevented them from attending in-service training. Drivers of emergency vehicles also must receive two hours training each year in the operation of the emergency vehicle. The driver also must pass a

comprehensive examination (T.C.A. § 55-8-194).

Regulating Fire Extinguisher Firms
Regulating fire extinguisher firms is exclusively a state function. However, a municipality may require permits for installing fire extinguisher systems. A municipality may also require those systems to conform to applicable building codes and requirements (T.C.A. §§ 62-32-201, *et seq.*)

Gender Friendliness
Fire departments are "encouraged" to have separate restroom, shower, and locker facilities for men and women in newly constructed stations. Fire departments are "urged" to make plans that will lead to gender friendliness in existing facilities. The purpose of the plans is to identify stations that can be made gender friendly and those that cannot. The plans are public documents. Existing facilities "should" be made gender friendly by using empty or unused rooms and by using male/female flip signs for showers and locker rooms, and individual cubicles for sleeping quarters (T.C.A. §§ 4-24-301, *et seq.*).

Open Burning of Wood Waste
T.C.A. § 68-201-115(c) regulates open burning of wood waste near occupied buildings. See "Local Air Pollution Regulations" in the chapter on Environmental Quality. Municipalities, however, may adopt more stringent standards that will be controlling.

Ambulance Service
A city or county may provide ambulance service as a governmental activity or may regulate such service provided by private operators or nonprofit, general-welfare corporations. No county may provide, license, franchise, or contract for ambulance service within a city or in another county without approval from the city's governing body, and the same restriction applies to cities (T.C.A. §§ 7-61-101–104). State regulation of emergency medical service agencies and licensing of emergency medical technicians (EMTs) is provided in the Emergency Medical Services Act of 1983 (T.C.A. §§ 68-140-501, *et seq.*). An EMT, physician, or nurse is required to attend every patient transported by an ambulance in Tennessee (T.C.A. § 68-140-159).

Mutual Aid and Fire Protection Outside Cities
Mutual aid contracts are authorized under the Interlocal Cooperation Act (T.C.A. §§ 12-9-101, *et seq.*). This act allows counties and cities to act jointly to provide services that each may provide separately, including fire service and law enforcement. (See also T.C.A. § 6-54-307, T.C.A. §§ 6-54-601–603.) An agreement made under the Interlocal Cooperation Act that creates an intergovernmental entity must be filed with the comptroller's office within 90 days of execution. Joint venture entities created under this act must file an annual statement with the comptroller indicating the parties, annual revenues and expenses, and other information (T.C.A. § 12-9-112).

An incorporated municipality is authorized to enter into mutual aid or fire protection assistance contracts with other cities, counties, private incorporated and industrial fire departments, utility districts that provide fire protection, metropolitan airport authorities that provide firefighting service, or "an organization of residents and property owners of unincorporated communities." A city may enter into individual contracts with noncity residents or provide the service without a contract. In either event, both the city's and county's legislative bodies must approve the arrangement (T.C.A. §§ 6-54-601–603).

Counties with a countywide fire district may mandate that all interlocal agreements contain performance-based criteria designed to assure timely response and effective service (T.C.A. § 5-17-101).

The Mutual Aid and Emergency and Disaster Assistance Agreement Act (MAEDAAA) of 2004 (T.C.A. §§ 58-8-101, *et seq.*), authorizes municipalities to assist other governmental entities in certain occurrences and emergencies when the requesting and responding parties do not have a mutual aid agreement. This law acts as a statewide mutual aid agreement for participating entities and provides for reimbursement as required in the federal policy noted below.

Federal policy, specifically Response and Recovery Policy Number 9523.6 of the Federal Emergency Management Agency, appears to require municipalities, in their mutual aid agreements, to require cost reimbursement by the entity receiving assistance in all instances if the municipality is to be reimbursed for aid in a presidentially declared disaster. Municipalities and entities acting under the MAEDAAA of 2004 in a state of emergency are required to reimburse responding parties, or to be reimbursed if they are a responding party, in accordance with this federal policy.

Police Operations

Police Authority Outside City
A city's police authority is extended one mile beyond its boundaries but not beyond the county's limits and not within one mile of any other city's boundary "for the suppression of all disorderly acts and practices forbidden by the general laws of the state" (T.C.A. § 6-54-301). Mutual aid contracts may be made with another city, with a metropolitan airport authority that provides law enforcement service, with the county, or with organizations of residents and property owners in unincorporated communities providing law enforcement assistance (T.C.A. § 6-54-307).

The Interlocal Cooperation Act allows contracts between cities and counties for police services (T.C.A. §§ 12-9-101, *et seq.*).

Service of Warrants and Process
Arrest warrants for people charged with municipal offenses committed within a city may be served by a city police officer at any point in the county in which the city is located (T.C.A. § 6-54-302).

A city with a population of more than 32,000 that has a city court may, by ordinance, permit "service of process" by registered or certified mail with return receipt requested in "an action of debt involving nonpayment of any ticket or citation issued for any nonmoving traffic violation" (T.C.A. § 6-54-305).

Citation in Lieu of Arrest or Warrant
Police officers who have observed an ordinance violation or, upon investigating, have reason to believe a city ordinance violation has occurred may issue a citation to appear for trial instead of making an arrest, provided the person cited signs an agreement to appear and waives a warrant issuance. If the person refuses to sign such an agreement, the usual procedure of arrest, booking, and release on bail (or commitment to jail) applies. This procedure does not apply to nonresidents of Tennessee or to a charge of driving while under the influence of intoxicants or drugs (T.C.A. §§ 7-63-101–107).

Another act mandates that an officer use similar procedures for any misdemeanor, but the act includes a list of situations in which the officer may use discretion and either issue a citation or detain the person. Another list describes situations in which citations should not be issued. When using this list, the police officer must write on each ticket the reason for not issuing a citation. This statute is somewhat detailed, and city police officials should study it carefully (T.C.A. § 40-7-118).

Officers are mandated to use citations instead of arrests for traffic violations not requiring the offender to appear before a magistrate or judge. This statute also sets out some exceptions and a detailed procedure and should be studied carefully by police officers involved in traffic control (T.C.A. § 55-10-207).

Criminal Warrants and Summonses
T.C.A. §§ 40-6-205 and 215 establish procedures and requirements for the issuance of criminal arrest warrants and summonses.

Citations in Lieu of Arrest for Health and Sanitation Violations
In the areas of sanitation, litter control, and animal control, a city may, by ordinance or resolution, designate employees who have the power to issue ordinance summonses for violations of any ordinance, law, or regulation. Such an ordinance summons is to be treated as a citation in lieu of arrest. If the offender refuses to sign an agreement to appear in court, the employee may request the clerk of the court to issue a summons, or he or she may request a police officer to make an arrest or witness the violation and issue a citation in lieu of arrest, as provided in T.C.A. § 7-63-104. If the offender fails to appear in court after signing an ordinance summons agreement, the court shall issue a warrant (T.C.A. §§ 7-63-201–204).

Minimum Standards for Police Officers
T.C.A. §§ 38-8-101–106 establish the Tennessee Peace Officer Standards and Training Commission, assisted by the director and staff of the Tennessee Law Enforcement Training Academy. The commission is empowered to develop, plan, and implement training programs for all local law enforcement officers and to administer and enforce this law's provisions.

The following statutory minimum qualifications apply to any person who is employed as a full-time, part-time, temporary, reserve, or auxiliary police officer. The officer must:

- Be at least 18 years old;
- Be a U.S. citizen;
- Have a high school or equivalent education;
- Not have a conviction or *nolo contendere* plea on any felony charge or law violation involving force, violence, theft, dishonesty, gambling, liquor, or controlled substances;
- Not have any discharge from the U.S. armed forces other than honorable;
- Have fingerprints on file at the Tennessee Bureau of Investigation;
- Pass a physical exam by a licensed physician;
- Have good moral character, as determined by a thorough investigation by the employing agency; and
- Be free of any apparent mental disorders, as certified by a qualified psychiatrist or psychologist, if the individual cannot perform the essential functions of the job because of the disorder, with or without a reasonable accommodation, or if the disorder results in the individual posing a significant risk to the health or safety of himself/herself or others that cannot be reduced or eliminated by reasonable accommodation. [Consent decree in *United States of America v. State of Tennessee* (Civil Action No. 1:98-1357, U.S. District Court for the Western District of Tennessee)].

Any person knowingly hiring or paying the salary of a person who fails to meet these qualifications is subject to a fine of up to $1,000. The commission is directed to establish criteria for exceptions to or waiver of these qualifications based on a person's previous law enforcement experience and training. Waivers are prohibited for specified deficiencies. Appeals from denied waivers may be taken to the commissioner of safety.

The commission shall issue a certificate of compliance to any person who meets the qualifications for employment and satisfactorily completes an approved recruit training program. All officers employed after July 1, 1983, must successfully complete recruit training within one year of their date of employment and thereafter must successfully complete an annual in-service training session appropriate for their rank and responsibilities.

Police Training and Salary Supplement

Officers who complete acceptable recruit training and at least 40 hours of annual training are eligible to receive a salary supplement of $600. This does not diminish any salary increments paid by the local government (T.C.A. § 38-8-111). Training on limits of using deadly force and on using citations in lieu of arrest is required (T.C.A. § 38-8-112, T.C.A. § 40-7-108). T.C.A. § 38-8-111(a) requires that police officers serving in the military receive their pay supplements if the military service prevented them from attending in-service training. Drivers of emergency vehicles also must receive two hours training each year in the operation of the emergency vehicle. Drivers also must pass a comprehensive examination (T.C.A. § 55-8-194).

A law enforcement officer employed by a judicial district drug task force is not entitled to the pay supplement for meeting the minimum certification requirements (T.C.A. § 8-7-110(a)).

By a two-thirds vote of the entire membership of its governing body, a municipality or county may establish an in-service training program for "certified correctional officers," which may include a cash supplement plan (T.C.A. § 38-8-111(d)).

Auxiliary Officers

Part-time, temporary, reserve, and auxiliary police officers must meet the same qualifications of age, education, citizenship, criminal record, and physical and mental fitness as full-time officers (T.C.A. § 38-8-106). They may work no more than 20 hours a week for a total of 100 hours per month (T.C.A. § 38-8-101(2)).

Assistance from Law Enforcement Training Academy

The director of the state Law Enforcement Training Academy is authorized "upon the request of the chief official of any law enforcement agency of ... a municipality ... to designate one or more of the commissioned instructors at the institute to assist such agency in its law enforcement role." An instructor so designated is supervised by the agency's chief officials and receives no compensation other than that of an instructor (T.C.A. § 38-8-207).

Suppression of Nuisances
Offenses specifically designated "nuisances" by statute and several other general offenses, including lewdness, gambling, prostitution, selling or exhibiting obscene material, drunkenness, and breach of the peace, are subject to abatement in a chancery, circuit, or criminal court. The court may order any personal property, money, or stock used in connection with such activities to be sold at public auction, and the proceeds are to be shared equally by the state general fund and the general fund of the municipality whose officers made the seizure (T.C.A. §§ 29-3-101–111).

Notification of Next of Kin in Event of Death or Serious Injury
Police officers and other police employees are required to make a reasonable effort to notify the next of kin of any person killed or seriously injured in an accident before any statement disclosing the person's name is given to the press. The investigating officer shall make a determination whether a person is "seriously injured." Neither the officer nor officer's employer shall be liable for the officer's opinion as to whether a person is seriously injured (T.C.A. § 38-1-106).

Domestic Violence
Under certain circumstances, judges may place conditions on release or bail for people charged with domestic violence. The law enforcement agency having custody of the defendant must provide a copy of the conditions to the defendant upon his or her release. In addition, the law enforcement agency must:

- Use all reasonable means to notify the victim; and
- Send to the victim's last known address or personally give to the victim a copy of any conditions of release. (Failure to furnish a copy of conditions shall not constitute negligence *per se*.)

An officer who has reason to believe that a person has violated the conditions of his or her release may make an arrest with or without a warrant (T.C.A. § 40-11-150).

A law enforcement officer's preferred response to domestic violence is to arrest the primary aggressor. The officer does not have to determine that a victim is not a primary aggressor. "Preferred response" means the officer must make the arrest unless there is a clear and compelling reason not to make the arrest. When a law enforcement officer believes that all parties are equally at fault, the officer must exercise discretion in determining whether to make any arrests. However, the officer must offer to transport the victim to a location where arrest warrants are issued and help the victim obtain an arrest warrant (T.C.A. §§ 36-3-601, *et seq.*).

Police officers must enforce orders of protection and may arrest for a violation with or without a warrant. An arrest must be made without a warrant if the officer has jurisdiction, if there are reasonable grounds to believe the order has been violated, and if the officer has verified that an order is in effect (T.C.A. § 36-3-611).

T.C.A. § 10-7-504(a)(17) requires utilities – and allows municipalities – to keep confidential the telephone number, address, and other information about a domestic violence shelter or rape crisis center when the director requests such in writing.

All law enforcement agencies must have adopted a domestic violence policy by December 31, 1997. The agencies must provide for education on the handling and investigation of and response to domestic violence reports (T.C.A. § 38-12-106).

Victims' Rights
Article I, Section 35, of the Tennessee Constitution guarantees victims of crime certain rights. Among these are the right to be free of intimidation or harassment throughout the justice system and the right to be informed of their rights. T.C.A. § 40-38-111 and T.C.A. § 40-38-113 contain provisions affecting police conduct and implementing this constitutional amendment.

D.A.R.E. Programs
D.A.R.E. programs are authorized by the Drug Abuse Resistance Education Act of 1989. This joint program of the state Board of Education and the Department of Safety is taught in local schools by trained law enforcement officers. Local school systems may receive funds under the Drug-Free Tennessee program to implement D.A.R.E. programs (T.C.A. §§ 49-1-401–406).

Details of Police Work
State laws prescribe many details regarding what police officers can and cannot do. For example, highway patrol officers may stop vehicles for driver's license checks, but city police officers must have probable

cause to believe an offense has been committed before they can check a license (T.C.A. § 40-7-103). Before using deadly force, a police officer, where feasible, must give notice of his or her identity as a police officer and give a warning that deadly force may be used (T.C.A. § 40-7-108). T.C.A. § 40-17-123 establishes detailed procedures police officers must use to subpoena documents and electronically stored data in gathering evidence in a criminal prosecution.

Sexual Offender Registration
Certain sexual offenders are required to register within 48 hours of a change of status and are subject to monitoring. They must report periodically to update information in law enforcement files (T.C.A. §§ 40-39-201, *et seq.*).

The public has access to TBI records containing sexual offender information if the offenses were committed on or after July 1, 1997. The TBI also must place the information on the Internet (T.C.A. § 40-39-106).

Public Drunkenness
Municipalities may not enact ordinances prohibiting public drunkenness. This offense is now punished exclusively under state law (T.C.A. § 33-8-510).

Reports to Police
All hospitals, clinics, sanitariums, doctors, physicians, surgeons, nurses, pharmacists, undertakers, embalmers, or other persons called upon to tender aid are required to report to a police chief any person in or brought into a city who is "suffering from any wound or other injury inflicted by means of a knife, pistol, gun, or other deadly weapon, or by other means of violence, or suffering from the effects of poison or suffocation" (T.C.A. § 38-1-101).

Gun Control Prohibited
State law provides that "no city, county, or urban-county government shall occupy any part of the field of regulation of the transfer, ownership, possession, or transportation of firearms, ammunition, or components of firearms or combinations thereof." However, this law does not affect the validity of any ordinance or resolution enacted before April 8, 1986. This section also prohibits municipalities from bringing lawsuits against gun manufacturers based upon the lawful design, manufacturing, marketing, and sale of handguns to the public (T.C.A. § 39-17-1314). Another statute prohibits the state or political subdivisions from prohibiting the possession, transfer, transport, carrying, storage, dispensing or use of firearms during a state of emergency (T.C.A. § 58-2-107).

Emergency Vehicle Lights
All vehicles except law enforcement vehicles are prohibited from having flashing blue lights or flashing blue lights in combination with flashing red lights. Vehicles operated by reserve or auxiliary police officers may, with the permission of the police chief, also use blue flashing lights or blue flashing lights in combination with red flashing lights (T.C.A. § 55-9-414).

Workhouse
Any municipality is empowered to maintain a "workhouse or house of correction" (T.C.A. § 41-3-101). Few, if any, municipalities use this authority.

Municipalities also may make agreements with other municipalities and counties to form regional jail authorities (T.C.A. §§ 41-12-101, *et seq*.).

Enforcement of City Ordinances by Sheriffs
Subject to an agreement among the municipality, the sheriff, the county's general sessions court, and the county's governing body, it is the sheriff's duty to enforce a city's ordinances if by ordinance the city declares this policy and furnishes certified copies of its ordinances to the sheriff and the county's general sessions court. Furthermore, the city must agree that it will pay enforcement costs not covered by court costs collected under its ordinances. "Civil penalties" are to be paid to the city, as distinguished from "court costs" (T.C.A. § 8-8-201(34), T.C.A. § 12-9-104, T.C.A. § 16-15-501(b)(1)).

Charitable Solicitations
Groups that solicit funds to benefit public safety personnel must register with the secretary of state as "charitable organizations" (T.C.A. § 48-101-501(1)). Volunteer fire departments, rescue squads, and local civil defense organizations are exempt from this requirement (T.C.A. § 48-101-502(a)(3)).

Authority of Law Enforcement Officers to Carry Firearms
T.C.A. § 39-17-1315 authorizes "any" law enforcement officer, police officer, county magistrate, retired police officer, and certain Tennessee Emergency Management Agency employees to carry handguns at all times, when authorized to do so by written directive of the chief law enforcement officer of the jurisdiction. A copy of the written directive must be retained by the issuing jurisdiction. This authorization also depends upon such officers completing and continuing to complete annually an eight-hour firearms training course. However, retired police officers are exempt from the firearms training requirement.

T.C.A. § 39-17-1350 authorizes law enforcement officers to carry firearms at all times and all places, while on or off duty, unless otherwise restricted by federal law, lawful orders of a court, or the "written directives" of the executive supervisor of the employing agency. A "law enforcement officer" for the purposes of this statute is "a person who is a full-time employee of the state in a position authorized by the laws of this state to carry a firearm and to make arrests for violations of some or all of the laws of this state, or a full-time police officer who has been certified by the peace officer standards and training commission." However, this law expressly does not extend to a law enforcement officer who:

- Carries a firearm onto school grounds or in a school building unless the officer immediately notifies the principal or appropriate administrative staff;
- Is consuming or is under the influence of alcoholic beverages or a controlled substance;
- Is in a place where intoxicating liquor or beer is being sold for consumption on premises and is not engaged in the discharge of his law enforcement duties; and
- Is not attending a judicial proceeding and is not engaged in the actual discharge of official duties as a law enforcement officer.

It is not clear whether the definition of "law enforcement officer" in T.C.A. § 39-17-1350 applies to T.C.A. § 39-17-1315.

Reimbursement for Purchasing Breathalyzers
With the approval of the Tennessee Bureau of Investigation, local governing bodies may purchase breath alcohol testing equipment under state contracts. Use of the instrument is to be reported to the court clerk. The clerk shall include an equipment service fee in court costs, which shall be remitted to the governing body as part of the court costs until the purchase price has been recovered (T.C.A. § 38-6-103).

Fingerprinting and Collecting DNA Samples
Law enforcement agencies are required to make a full set of fingerprints of each person arrested for an offense that results in incarceration or posting bond. (People issued citations are not considered arrested and do not have to be fingerprinted.) Two sets of prints must be sent to the TBI if the agency maintains fingerprints manually. The TBI keeps one set and sends the other to the FBI (T.C.A. § 38-3-122, T.C.A. § 8-8-201(35)). Departments that send fingerprints electronically must maintain with the arrest report one hard copy of the fingerprints and acknowledgment from the TBI that the electronic copy has been received and accepted. When a person is arrested repeatedly for public intoxication, the officer must note that fingerprints are on file. Sanctions for failing to comply with the fingerprinting requirements apply only to fingerprints taken on or after July 1, 1999, and are imposed on the agency conducting the fingerprinting.

Prior to purchasing fingerprinting equipment, local departments are required to obtain certification from the TBI that the equipment is compatible with the TBI's and the FBI's automated fingerprint identification system (T.C.A. § 8-4-115, T.C.A. § 39-17-420).

The arresting authority must take a biological sample for DNA analysis from any person arrested for certain violent felonies. The sample must be taken after determination by a magistrate or grand jury that probable cause exists for the arrest but before release (T.C.A. § 40-35-321).

Drug Fines; Special Revenue Fund
T.C.A. § 39-17-428 and T.C.A. § 53-11-452, respectively, entitle local governments responsible for arrests in drug-related cases to retain the proceeds of fines and of goods seized and forfeited in such cases. T.C.A. § 39-17-428(c)(1) requires that 50 percent of the fines received by the local government be paid into a special revenue fund; the other 50 percent is paid into the local government's general fund.

With respect to the special revenue fund, the money may be used for drug enforcement, drug treatment and education, and certain nonrecurring drug program general law expenditures (generally capital outlays). In addition, "a portion of any fine collected pursuant to subsection (b) (the schedule of fines for certain drug-related offenses) may be expended to fund programs and services for infants and children who are afflicted by HIV or AIDS." In the case of municipalities, the chief law enforcement officer and the mayor (or the county mayor in Moore and Trousdale counties) must recommend a budget for the fund,

which budget must be approved by the municipal governing body. Different requirements apply to Metropolitan Nashville-Davidson County (T.C.A. § 39-17-420(a)(2)).

Cash transactions from the special revenue fund related to undercover operations must comply with procedures established by the comptroller. The law continues to require that purchases with drug fund money comply with all applicable purchasing laws. Twenty percent of the funds must be set aside to pay for automated fingerprinting equipment until reaching the equipment's purchase price. Instead of buying the fingerprinting device, local governments may enter into agreements with other local governments to use their automated equipment. Additionally, local governments may continue to earmark up to 20 percent of drug fund revenues to offset the cost of dedicated phone lines, maintenance contracts, and support contracts for the automated fingerprinting instrument (T.C.A. § 39-17-420).

Clerks of municipal courts exercising general sessions jurisdiction must collect $75 from any person found in violation of the terms of a suspended sentence when the violation is based upon a positive drug test. Funds from this assessment will be used to administer drug court treatment programs created by courts exercising criminal jurisdiction. This act also allows juvenile courts to create and operate drug court treatment programs, but provides that revenues from the $75 fee cannot be used to support these juvenile programs (T.C.A. §§ 16-22-109, 114).

Execution of Certain Firearm Documents
T.C.A. § 39-17-1361 requires the chief of police of the city of residence of a person purchasing any firearm as defined in 26 U.S.C. §§ 5845, *et seq.*, to execute within 15 business days of any request all documents required to be submitted by the purchaser if the purchaser is not prohibited from possessing firearms under T.C.A. § 39-17-1316.

Methamphetamine Precursors
T.C.A. § 39-17-431 establishes several restrictions on the sale of methamphetamine precursors, such as limiting their sale to only licensed pharmacies and prohibiting the sale of more than three packages of the regulated products to the same person in a 30-day period. This section supersedes ordinances that were in effect on March 31, 2005.

Quarantine of Drug Sites
T.C.A. §§ 68-212-501, *et seq.*, allow local law enforcement agencies to quarantine methamphetamine and other stimulant drug manufacturing sites until they are cleaned up and certified by an industrial hygienist as safe for humans. Within seven days of a quarantine order, the law enforcement agency must notify the commissioner of the Department of Environment and Conservation of the date of the order, county, address, name of the site owner, and a brief description of the site. The law enforcement agency must also file a notice of quarantine with the county register.

Charging Inmates for Services
A municipality may charge an inmate in the municipal workhouse a copay for substance abuse treatment provided by the municipality (T.C.A. § 41-4-115(d)). The municipality also may charge a fee to inmates for participating in GED or other academic testing and for escorts to funeral homes and health care facilities upon the death or sickness of a family member. The governing body must authorize these fees by a two-thirds vote.

Drug Dealer Liability
T.C.A. §§ 29-38-101, *et seq.*, establish procedures for municipalities and others to obtain damages that result from illegal drug use.

911 Emergency Communications Districts

T.C.A. §§ 7-86-101, *et seq.*, authorize a city's or county's governing body to request by resolution that the county election commission hold a referendum within all or part of the boundaries of the municipality or county to establish a 911 emergency telephone system. If a majority votes in favor of such action, the governing body is to appoint seven to nine board members to govern the district's affairs. The district is designated a "municipality or public corporation in perpetuity under its corporate name," but it does not have the power to levy taxes. A board member may not be a district employee.

To fund the 911 system, the board is empowered to "levy an emergency telephone service charge in an amount not to exceed 65 cents per month for residential users and $2 per month for business users."

Additionally, the local 911 system receives a portion of the revenues generated by the charge on wireless phones in accordance with a formula contained in T.C.A. § 7-86-303. The board may call for a referendum on increasing the emergency telephone service charge to not more than $1.50 per month for residential users and $3 per month for business users (T.C.A. § 7-86-108(a)). Unless such an increase is approved in a referendum, there must be notice and a hearing of the governing body that created the district before an increase may be made. The board also is authorized to receive funds from federal, state, and local governments; private sources; and issuance of bonds. Annual district audits that comply with the comptroller's standards are required (T.C.A. §§ 7-86-101–117). The governing body of the county or municipality that created the district also may lower the emergency telephone service charge levied by the district's board of directors. The governing body's ordinance or resolution, which must pass by a two-thirds vote, may not lower the levy below the amount needed to fund the district's operations. The decreased levy remains in effect until rescinded by a majority vote of the governing body (T.C.A. § 7-86-108).

These comprehensive fiscal management requirements apply to each emergency communications district:

- Copies of the district's annual audit must be provided to the legislative body and chief executive officer of the city or county (T.C.A. § 7-86-113);
- Copies of the district's annual budget must be provided to the municipal legislative body and the city's chief executive officer both before and after passage, and the budget must include a schedule of salaries (T.C.A. § 7-86-120); and
- Officers and employees of an emergency communications district that receives public funds must be bonded, and the premium must be based on revenue and paid by the district (T.C.A. § 7-86-119).

If the system is funded by general funds, a municipality may create and operate a 911 emergency system without a referendum (T.C.A. § 7-86-151).

The municipal governing body may serve as the board of directors of an emergency communications district created after July 1, 2002.

Counties and cities may delegate to emergency communications districts the authority to establish and enforce policies for assigning and posting property numbers (T.C.A. § 7-86-127).

Emergency communications district board members are granted complete tort immunity except in cases of gross negligence (T.C.A. § 29-20-108).

T.C.A. §§ 7-86-301, *et seq.*, created a statewide Emergency Communications Board of nine members under the Department of Commerce and Insurance. This board's approval is required for the establishment of any new E-911 district within an existing E-911 district. It has the power to compel the merger or takeover of financially distressed E-911 districts, order referenda for the creation of countywide E-911 districts where no such district was created by January 1, 2000, and set technical operating standards. E-911 districts are required to use uniform financial standards adopted by the comptroller. The board is financed by a fee of up to three dollars per month on commercial mobile phone use.

T.C.A. § 7-86-108(f) allows the state Emergency Communications Board to withhold emergency communications funds from local districts if the district is operating in violation of state law or is not taking sufficient action to provide wireless 911 service.

Qualifications for Emergency Dispatchers

With certain narrow exceptions, all public safety dispatchers who receive requests for or dispatch emergency aid by telephone, radio, or other telecommunications devices must meet certain qualifying and educational requirements Each dispatcher or call taker who receives initial or transferred 911 calls must successfully complete a training course approved by the state Emergency Communications Board by July 1, 2006. Persons employed after that date have six months to complete the course (T.C.A. § 7-86-205).

Seizure of Property

Seizure of Illegal Liquor

City police officers have a duty to search for and capture illicit stills and associated paraphernalia. They also are required "to summarily destroy and render useless such property" and "all whiskey, beer, or other intoxicants" found at or near the site except beverages on which a federal tax has been paid. Such destruction must take place in the presence of "at least two credible witnesses." Within five days

thereafter, the officer must file a written statement of all items destroyed with the circuit or criminal court clerk of the county where seized and furnish a copy to the state Alcoholic Beverage Commission (T.C.A. § 57-9-101). Any illegally held or transported intoxicating liquors on which a federal tax has been paid and that have been seized by a city police officer must be turned over to the sheriff within five days. After subsequent sale by the state, the proceeds minus 10 percent are to be remitted to the city (T.C.A. § 57-9-106, T.C.A. § 57-9-115).

Seizure of Vehicle for DUI
A vehicle used in the commission of a person's second or subsequent DUI is subject to seizure and forfeiture. (Effective July 1, 2003, a blood alcohol concentration level of .08 percent while operating a vehicle constitutes DUI.) A vehicle used in violation of the statute on driving with a suspended or revoked license due to a DUI conviction also is subject to seizure and forfeiture. Revenue from the sale of such vehicles remains with the local government responsible for the seizure to pay the reasonable and direct expenses of confiscation, towing, storage, and sale. Remaining revenue must be transmitted to the Department of Health by June 30 of each year (T.C.A. § 40-33-211).

Seizure of Vehicle for Arson
Vehicles used in arson crimes also are subject to forfeiture (T.C.A. § 39-14-307).

Seizure of Vehicle for Promoting or Patronizing Prostitution
The vehicle in which a second or subsequent offense of promoting or patronizing prostitution is committed is subject to seizure and forfeiture. A seizure may not be made before conviction. The violations must occur in Tennessee on or after July 1, 2002, and the second or subsequent offense must occur within five years of the prior offense (T.C.A. § 29-3-101).

Seizure of Property Used in Sex Crimes
Vehicles and other property used in certain sex crimes are subject to seizure and forfeiture. Proceeds from forfeitures accrue to the state to be allocated to the child abuse fund (T.C.A. § 40-33-211(h)).

Seizure of Property Used in Drug Offenses
Property used to commit drug offenses, such as vehicles, aircraft, or boats, and property acquired with the proceeds of drug felonies, may be taken through a civil procedure instituted by the district attorney or through an administrative procedure before the commissioner of safety and sold at public auction. Sale proceeds are earmarked for the city's drug enforcement program and certain other law enforcement expenses. Any vehicle seized may be used in the local drug enforcement program for not more than five years (T.C.A. § 39-17-420, T.C.A. §§ 53-11-201–204).

Seized Conveyances Used in Robberies or Felony Thefts
Sale proceeds from a vehicle, an aircraft, a vessel, or other conveyance forfeited because of use in a robbery or felony theft go to a city if the property was seized by its law enforcement personnel. The property must be used exclusively for law enforcement (T.C.A. § 40-33-110).

Seizure of Commercial Vehicles
When seizing a commercial vehicle that the driver does not own, officers are required to make reasonable efforts to determine the name of the owner and to notify him or her of the seizure. Rental cars are included in the protection afforded by this statute. Forfeiture of commercial vehicles is governed by special rules based on ownership of the vehicle (T.C.A. §§ 40-33-201, *et seq.*).

Emergency Preparedness

Civil Emergencies and Curfews
Tennessee city officials have clear authority to respond to emergencies. The definition of "civil emergency" includes a "riot or unlawful assembly ... by three or more persons acting together without authority of law," a severe "natural disaster or man-made calamity," and one or more people destroying property or injuring others, causing "a threat to the peace of the general public or any segment thereof."

A mayor or city manager (depending on the city's charter) or other "chief administrative officer" may declare a civil emergency. The person must be specially designated by ordinance for purposes of this law. The declaration must be filed with the city clerk or recorder. After such a declaration, the chief administrative officer may establish general curfews for specified areas and hours "as he deems advisable [and] ... necessary" not to exceed 15 days. Certain personnel are exempted from the curfew. The chief

administrative officer may order:

- Closing all retail liquor stores;
- Closing all establishments where beer or alcoholic beverages are served;
- Closing all private clubs or portions thereof where consuming intoxicating liquor or beer is permitted;
- Discontinuing beer sales;
- Discontinuing selling, distributing, or giving away gasoline or other flammable liquid or combustible products in any container other than a gasoline tank properly affixed to a motor vehicle;
- Closing gasoline stations and other establishments, the chief activity of which is selling, distributing, or dispensing flammable liquid or combustible products;
- Discontinuing selling, distributing, dispensing, or giving away any firearms or ammunition of any kind whatsoever; and
- Closing any or all establishments or portions thereof whose chief activity is selling, distributing, dispensing, or giving away firearms or ammunition.

The chief administrative officer also may issue such other orders necessary to protect life and property (T.C.A. §§ 38-9-101–106).

Disasters, Emergencies, and Civil Defense

T.C.A. § Title 58, Chapter 2, prescribes how man-made and natural civil emergencies (including energy emergencies) and disasters of virtually every kind are to be managed by the state and outlines the role of local governments in those areas. The statute designates TEMA as the state's primary agency through which the governor's civil emergency powers are exercised. TEMA is responsible for creating the Tennessee Emergency Management Plan (TEMP), which must "ensure that the state is prepared for emergencies and minor, major, and catastrophic disasters...." The TEMP must include, among other things, evacuation, shelter, and post-disaster response components and establishes the relationship between the state and local governments in a disaster.

The political subdivisions of the state also have broad emergency management powers, including the power to:

- Appropriate and expend funds and make contracts;
- Appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other emergency management workers;
- Assign and make available for duty, within and without the political limits of the political subdivision, the offices and agencies of the political subdivisions, including employees, property and equipment, relating to all of the public safety, health, and utility services provided by most municipalities; and
- Request state assistance or invoke emergency-related mutual aid assistance by declaring a state of local emergency. The duration of such a local emergency is limited to seven days unless extended, as necessary, in seven-day increments. In such a case, the political subdivision also has the power to waive procedures and requirements required by law relative to performing public works; entering into contracts; incurring obligations; employment; using volunteer workers; renting equipment; acquiring and distributing supplies, materials, and facilities with or without compensation; and appropriating and spending municipal funds.

Employees who render emergency management aid outside their home boundaries have the same powers, duties, rights, and privileges they have in their own political subdivisions.[17] Their compensation, travel, maintenance, and personal injury or death payments must be borne by the political subdivision that receives the aid. The costs of operating and maintaining equipment provided by the political subdivision supplying the aid, as well as the costs of repairing or compensating for damage to that equipment, must also be borne by the political subdivision receiving the aid. However, where service or equipment is volunteered, or property is taken, compensation may be limited.

The governing body of each political subdivision is authorized to enter into mutual aid agreements for emergency aid. Agreements must be consistent with the TEMP. Each local emergency management agency has the duty in emergencies to render assistance to the fullest possible extent in accordance with the provisions of its mutual-aid agreements. The violation of any order, rule or regulation issued during an emergency declared under the emergency management statute is a Class A misdemeanor.

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[17]For more information on mutual aid among local governments, see the section on mutual aid earlier in this chapter and the MTAS publication *Emergency Assistance and Mutual Aid in Tennessee: 2004 Update* by Ray Crouch and Dennis Huffer.

Notice of the suspension of any state or federal funding related to emergency management programs must be provided by TEMA to the state senator and representative who represent the affected area, and to the "principal officer" of the municipality or county, if applicable. The notice must include, among other things, the date, amount, length of, and reasons for the suspension.

Miscellaneous

Disaster Relief
A municipality's governing body may apply to the state Disaster Relief Commission for financial help with natural disasters when federal funds are not available. Up to $1 million is authorized for a "declared localized disaster." Such grants are subject to whether there are sufficient funds in the contingency reserve account for civil defense and disaster relief (T.C.A. §§ 58-2-501–518).

Enforcement of Federal Immigration Laws
Municipalities may make agreements with the federal Department of Homeland Security concerning the enforcement of federal immigration laws. Law enforcement officers designated by the chief would then be trained in enforcing these laws (T.C.A. § 50-1-101).

Notice of Prohibition of Weapons in Public and Private Places
T.C.A. § 39-17-1359 authorizes individuals, corporations, business entities, and local, state, and federal government entities to prohibit the possession of weapons by persons otherwise authorized to carry them under state law at meetings conducted by or on property owned, operated or managed by or under the control of such persons and entities. Notices of this prohibition must be displayed in prominent places, including all entrances used primarily by persons entering the building, portion of the building, or buildings where the prohibition applies. If the prohibition applies to the premises of any such property as well as to the confines of buildings located on such property, the notices must be posted at all entrances to the premises that are used primarily by persons entering the property. The notice:

- Must be of a size plainly visible to the average person entering the building or premises;
- May include the international circle and slash symbolizing the prohibition of the item within the circle;
- Must be in English; and
- May be in other languages used by patrons, customers, or persons who frequent the building or premises.

The text of the notice must contain language similar to the following:

> Pursuant to T.C.A. § 39-17-1359, the owner/operator of this property has banned weapons on this property or within this building or this portion of this building. Failure to comply with this prohibition is punishable as a criminal act under state law and may subject the violator to a fine of no more than $500.

Signs posted by local governments that substantially comply with this notice may continue to be used.

It is a Class A misdemeanor for a person other than an on-duty law enforcement officer, military employee, correctional officer, or the owner or employee of the owner to possess a firearm where beer or intoxicating liquor are served for on-premises consumption (T.C.A. § 39-17-1305).

Chapter Eighteen

Streets and Other Public Ways[18]

State Highways

All costs of designing, constructing, and maintaining a state highway through a city are paid by the state. The state may contract with a city and reimburse it for constructing a state highway through the city (T.C.A. § 54-5-201).

The state may contract with a city to maintain a state highway through the city. All reimbursements under the contract must be approved by the state Department of Transportation (T.C.A. § 54-5-203).

Cities may improve or add to the state highway system at their own expense. The project must be approved by the commissioner of transportation. Upon completion of the project in conformance with state standards, the state Department of Transportation must assume maintenance responsibilities (T.C.A. § 54-5-140).

The state has sole authority to select which streets will be designated state highways and to determine construction specifications for highways (T.C.A. § 54-5-202, T.C.A. § 54-5-205).

(See Chapter 16, "Utilities," for information on utility relocations for highway construction.)

Interstate Highway System

Parts of interstates running through cities must be maintained by the state. However, the city, not the state, has authority to maintain and pay for interstate lighting. Such lighting must meet state-prescribed standards (T.C.A. § 54-5-206).

If a city fails to enter into an agreement with the state about acquiring rights of way for interstate highways or does not abide by such an agreement, the state may, on its own, locate and construct interstate highways in a municipality. This includes exercising eminent domain and adjusting or relocating utility facilities (T.C.A. §§ 54-5-207–208).

No ordinance may be passed by a city that would cause the state to lose federal aid funds for interstates (T.C.A. § 54-5-209). The costs of relocating utility facilities for interstates may be borne by the state, provided funds are available and the work meets state approval (T.C.A. §§ 54-5-801–807).

If interstate connector routes are required, cities and counties may enter into construction agreements with the state. The city or county must agree to pay 50 percent of the project and assume all maintenance costs after construction is complete. The city must deposit with the state 50 percent of right-of-way acquisition costs before any land is obtained for the project. Work will not be started until 50 percent of the remaining cost is deposited with the state. The same rules apply to fully controlled-access highway connector routes (T.C.A. §§ 54-5-501–508).

Metropolitan Planning Organizations
Federal highway legislation requires cities in metropolitan areas to participate in regional transportation planning organizations in order to receive federal funding for highways and other transportation projects. The state Department of Transportation participates in the Metropolitan Planning Organization process and manages federal planning funds. State law authorizes these cooperative planning agreements (T.C.A. §§ 54-18-101–104).

[18]For more information on streets, see the MTAS publication *Opening and Closing Municipal Streets in Tennessee and Selected Legal Potholes and Patches in Between* by Sid Hemsley.

Street Construction

Cooperative Planning
Cities may enter into agreements with the state Department of Transportation and State Planning Office to develop a continuing and comprehensive transportation plan to ensure that projects reflect the needs and desires of local government (T.C.A. §§ 54-18-101, *et seq.*).

Ramps for the Handicapped – State and Federal Requirements
"Every incorporated city and town" must install ramps "at crosswalks in both business and residential areas when making new installations of sidewalks, curbs, or gutters or improving or replacing existing sidewalks, curbs, or gutters" to facilitate the movement of people in wheelchairs and others with mobility impairments. The state Department of Transportation must furnish design standards for such ramps, and construction must be in accordance with those standards (T.C.A. § 7-31-114).

Under the Americans with Disabilities Act, local governments must provide curb ramps or other sloped areas at the intersections of newly constructed or altered streets, roads, or highways to make them accessible for the handicapped (28 CFR 35.151).

Public Bridges
A city and a county may agree to construct and share the costs of a free or toll bridge over any stream in or next to a municipality. Bonds may be sold to finance such a project (T.C.A. §§ 54-11-222–224).

Bridge Grants
The 1990 Bridge Grant Program Act created a bridge replacement and rehabilitation program for local governments. The Tennessee Department of Transportation administers the program and may approve grants for up to 70 percent of project cost. Participating cities must comply with National Bridge Inspection Standards (T.C.A. §§ 54-4-501–508).

Condemnation
Municipalities are authorized to condemn land for streets and street-related purposes under various statutes:

- Streets–T.C.A. § 7-35-107, T.C.A. § 29-16-101, T.C.A. § 29-17-801;
- Public works projects–T.C.A. § 9-21-107;
- Controlled-access highways–T.C.A. § 54-16-104; and
- Drainage ditches–T.C.A. § 7-35-101, T.C.A. § 29-16-201.

Generally, the procedures outlined in T.C.A. § 29-16-101 and T.C.A. § 29-17-801 govern the condemnation of property. T.C.A. §§ 29-17-101, *et seq*., place restrictions on the use of eminent domain when there will be direct or indirect benefits to private individuals or entities. One of several exceptions from these restrictions, however, allows private benefits when "any interest in land necessary for a road, highway, bridge, or other structure, facility, or project used for public transportation" is taken. (See *Eminent Domain in Tennessee: An Attorney's Guide* by James Murphy, The University of Tennessee Municipal Technical Advisory Service, 1992; updated by Dennis Huffer, 2007.) T.C.A. § 66-27-207 places restrictions on the use of eminent domain to take condominium units.

Construction Guarantee
In a contract for paving a public way, cities may require that the contractor guarantee "to maintain and repair the same for such time as the governing body or board thereof shall deem proper" (T.C.A. § 7-31-113).

Plans, Specifications, and Estimates
Plans, specifications, and estimates for any public works project exceeding $25,000 must be prepared by a registered architect or engineer (T.C.A. § 62-2-107).

Miscellaneous

Vandalism and Obstructing Roadways
The state's criminal code defines vandalism as "knowingly caus(ing) damage to or the destruction of any real or personal property of ... any ... city or town." Whether the offense is a misdemeanor or a felony depends on the value of the damage (T.C.A. § 39-14-408).

Unlawful possession of a traffic-control sign acquired or erected after July 1, 1998, is a Class B misdemeanor punishable by a fine up to $500. The sign must indicate the municipality that erected the sign and the date it was erected (T.C.A. §§ 54-10-112–113).

It is a Class A misdemeanor for an unauthorized person to carve upon, mark upon, or destroy, deface, steal, or remove any bridge, overpass, tunnel, fence, wall, traffic control device, sign, or other highway structure or building (T.C.A. § 54-1-134).

Obstructing a highway, street, or sidewalk is a Class C misdemeanor. It is a defense to prosecution if the obstruction is a charitable solicitation roadblock done by a 501(c)(3) or (4) charitable organization if:

- Reasonable precautions are taken; and
- The organization has the local police department's written approval.

The municipality granting the roadblock permit is given immunity for accidents resulting from the roadblock. A municipality may, by ordinance, prohibit charitable roadblocks and otherwise regulate collecting donations on municipal streets (T.C.A. § 39-17-307).

Criminal Littering
Mitigated criminal littering (littering in an amount less than or equal to five pounds or 7.5 cubic feet) is a Class C misdemeanor. Littering in greater amounts is greater than a Class C misdemeanor, depending on amounts, purpose, and number of convictions.

Law enforcement officers must enforce littering laws, but all revenues derived from littering fines must accrue to the general fund of the county where the offense occurred to be used for litter prevention (T.C.A. §§ 39-14-501, *et seq.*).

Controlled-access Streets
Cities have the authority to designate controlled-access streets and regulate entering and exiting such streets by constructing raised curbs, markers, etc. Constructing any commercial enterprise is prohibited on such streets. The same authority to designate and regulate extends to local service roads adjacent to controlled-access streets (T.C.A. §§ 54-16-102–109).

Height Limits on Buildings Along Scenic Routes
Buildings (except silos or barns) constructed on designated scenic routes may not be higher than three stories if they are within 1,500 feet of the highway (T.C.A. § 54-17-115).

Hot Mix Asphalt and Aggregate Production Facilities
Municipalities and counties may, alone or cooperatively, own and operate hot mix asphalt and aggregate production facility (T.C.A. § 12-8-101). This law requires municipalities and other local governments that want to own and operate an asphalt or aggregate production facility to prepare a financial feasibility study that must be submitted to the comptroller and a financial feasibility oversight committee created in the statute. The committee must hold a hearing for which the mayor of the municipality sets a date and the municipality gives notice. The committee must report on its opinion(s) of the feasibility of the project. The governing body may then determine by a two-thirds vote to approve or deny the acquisition of the plant or facility.

Contracts with the County
A municipality may contract with a county road department to perform road work for cities if the county is paid all its expenses for performing such work (T.C.A. § 54-7-202(d)(2)).

Railroad Crossings
T.C.A. § 65-11-101 requires plans for proposed public railroad crossings and conversions of private to public crossings on streets and highways to be submitted to the Department of Transportation. The department must submit the plans to the affected local government for review and comment before it approves or disapproves the plans. This section also requires any entity that wants a railroad crossing constructed or converted to a public crossing to pay all costs of the construction or conversion.

Chapter Nineteen

Transportation and Motor Vehicles

Public Transportation

Full power to acquire, construct, and operate any type of public transportation system is vested in counties and municipalities "or any combination thereof" (T.C.A. §§ 7-56-101–109).

Notification of State Department of Transportation of Train Regulations
Certified copies of any ordinances regulating trains within a city's limits "or newly extended limits" (annexation ordinances seem to be included) must be sent to the commissioner of transportation. Within seven days, the commissioner is to mail copies to the railroad's registered agent for service of process. Such ordinances shall be effective 15 days after receipt by the registered agent. An ordinance becomes effective when received by the executive director if a railroad fails to register an agent for service of process (T.C.A. §§ 7-51-801–804).

However, municipalities may not regulate train speeds within city limits. Such authority belongs only to the Federal Railroad Administration pursuant to the Federal Railroad Safety Act (45 U.S.C. 421, *et seq.*), *CSX Transportation v. City of Tullahoma*, 705 F. Supp.385 E.D.Tenn. 1988).

Transit Authority
A transit authority may be created by ordinance or by resolution. Contracting for management of a transit system is specifically authorized as an alternative to direct operation by a municipality, county, or transit authority. Service may be extended beyond county lines and, with necessary approvals of their regulatory agencies, into adjoining states.

A municipality or transit authority may issue debt, exercise eminent domain, and enter into interlocal agreements with other cities, counties, and even other states regarding purchasing and operating public transportation systems.

Additionally, a municipality, county, or combination thereof may empower a transit authority to "license and regulate all forms of public transportation," such as taxicabs and airport limousines.

If an existing system is acquired, a municipality is empowered to make "fair and equitable arrangements" to preserve employees' benefits typically included in union contracts. Collective bargaining and voluntary arbitration also are authorized. Strikes are prohibited (T.C.A. §§ 7-56-101, *et seq.*).

To help fund its transit system, a county or city governing body may call for a referendum on a gasoline tax of up to 1 cent per gallon (T.C.A. §§ 67-3-1001–1012).

Subsidized Private System
Any municipality, county, or combination thereof may pay a reasonable subsidy to a public or private company operating a transit system, "the amount thereof to be wholly in the discretion of the governing body" (T.C.A. § 7-56-107).

Franchise of Transit Service
Regulating, controlling, and franchising street railways and bus lines are vested in a municipality's governing body, which may delegate such power to a "municipal regulatory agency" or to the state Department of Transportation. This jurisdiction shall extend seven miles beyond a city's boundary for cities of more than 100,000 in population, four miles for those with populations of between 50,000 and 100,000, and two miles for those with populations of less than 50,000. An operating company must obtain a municipality's consent before using any of its streets (T.C.A. § 65-16-101, T.C.A. § 65-16-105).

State Grants
The state may provide grants for mass transportation capital projects or technical studies. Funded projects must be approved by the state commissioner of transportation and must be consistent with the statewide, comprehensive plan for transportation. Cities and counties are empowered to acquire, operate, and maintain mass transportation facilities or to contract with private companies for such services (T.C.A. §§ 13-10-107–109).

Traffic Control

Traffic-control Lights
The design of traffic lights is established by state law. Green means "go," yellow means "caution," and red means "stop." All lights must have a uniform arrangement of colored lenses. In vertical lights, red lenses must be above yellow and green lenses. In horizontal lights, red lenses must be to the left of yellow and green. Yellow lenses must be between red and green lenses. Yellow lights must show for at least three seconds, and a city is responsible for setting timers on city-owned lights to comply with this requirement. Right turns during red lights are permitted unless a "NO TURNS ON RED" sign is posted by the city. After a full stop, a left turn may be made during a red light onto a one-way street where traffic moves to the left if a sign granting permission is in place. Motorcycle operators may proceed through an intersection red light after stopping and ascertaining that this can be done safely if the light is controlled by a vehicle detection device that is not activated because of the size of the motorcycle (T.C.A. § 55-8-110).

Traffic-control Signs
Municipalities must comply with the *Manual on Uniform Traffic-Control Devices for Streets and Highways*, which contains requirements for the design and location of signs, signals, and markings. The manual also spells out rules for posting traffic regulations on or along all streets and highways (T.C.A. § 54-5-108).

To indicate ownership, any local government agency may stamp, etch, or otherwise permanently mark the backs of signs, signals, etc., with letters between one-quarter and three-quarters of an inch high (T.C.A. § 55-8-184).

Enforcement of Motor Vehicle Rules and Regulations — State Pre-emption
City ordinances may adopt by reference the state Rules of the Road that are Class C misdemeanors (T.C.A. § 16-18-302). See also T.C.A. § 55-10-307. Primary responsibility for enforcing state and local motor vehicle laws falls on municipalities within their city limits. In addition to or in lieu of any other penalty imposed, a court may require violators to attend a driver improvement course. The city may provide such a course and charge a fee of between $50 and $175. However, no person may be refused admittance because he or she cannot pay (T.C.A. § 55-10-301). T.C.A. § 55-8-196 allows a person sentenced to driver school to attend the school in his or her county of residence rather than in the county where the citation was issued, at the discretion of the court. A city offering a course consents to having its course records inspected by the Department of Safety. Certain violations are exclusively state offenses and must be prosecuted in courts with state jurisdiction. These violations include driving while intoxicated or drugged, failing to stop after an accident, driving with a suspended or revoked license, and drag racing (T.C.A. § 55-10-308).

Municipalities also may conduct community education courses for persons convicted of leaving a child in an unattended vehicle. Restrictions are similar to those for driver safety courses (T.C.A. § 55-10-804).

Enforcement of Traffic Rules and Regulations on Private Property
T.C.A. § 55-10-317 allows law enforcement agencies to enforce traffic laws on private streets in residential developments with single and multifamily dwellings. A majority of residents of the development must approve this in a petition to the governing body. The governing body must establish traffic laws in the development, just as it does for public streets (T.C.A. § 55-10-301).

With written permission from the property owner or manager, police officers may go onto the premises of any shopping center or office park that generally is open to the public to inspect any motor vehicle to determine if the vehicle is properly registered and licensed (T.C.A. § 55-10-316).

T.C.A. § 55-5-122(b) provides that subsection (a) of that section, which restricts the towing of vehicles on private property, does not restrict the authority of municipalities and metropolitan governments to regulate parking and towing of motor vehicles within their boundaries. (But see "Regulation of Towing or Wrecker Companies" in Chapter 13.)

Pedestrian Traffic
Cities may by ordinance require pedestrians, including people using wheelchairs, to comply with traffic-control devices and prohibit crossing a business district street or a designated highway except at crosswalks (T.C.A. § 55-8-133).

Child and Passenger Safety Restraints – Motor Vehicles
T.C.A. § 55-9-602 sets out complicated requirements based upon age, weight, and height for persons transporting children in motor vehicles to follow in restraining them. The statute creates an exception for children unable to be transported in a conventional restraint. Municipalities are expressly authorized to adopt by ordinance the provisions of T.C.A. § 55-9-602.

T.C.A. § 55-9-603 provides that no person shall operate a motor vehicle in Tennessee unless that person and all passengers four years of age or older are restrained by a safety belt at all times when the vehicle is in forward motion. There are exemptions for certain types of vehicles and vehicles traveling at a top speed of 15 mph. This statute provides that it applies only to the operator and all passengers occupying the front seat of a passenger motor vehicle. However, T.C.A. § 55-9-602 apparently supercedes T.C.A. § 55-9-603 with respect to children through age 15. A violation of 55-9-602 is a Class C misdemeanor, but offenders may, in lieu of a court appearance, pay a fine of $10 for the first offense. If the vehicle operator or passenger is between the ages of 9 and 15, inclusive, the fine in lieu of a court appearance is $50. Clerks' fees, court costs and litigation taxes also are prohibited for convictions for violations involving children ages 9 through 17.

A violation of 55-9-603 also is a Class C misdemeanor. A person charged with a violation may, instead of appearing in court, submit a fine of $10 for the first violation and $20 for second and subsequent violations. If a violation involves a 16- or 17- year- old, the initial fine in lieu of a court appearance is $20.

Law enforcement officers observing a violation of 55-9-603 should issue a citation but not arrest a person solely for a violation of this law.

Helmets for Minors on Off-road Vehicles
It is a Class C misdemeanor for a parent or guardian of a minor to allow the minor to ride on an ATV, dune buggy, snowmobile, or dirt bike without a helmet in most circumstances. A law enforcement officer witnessing a violation must obtain the name and address of the parents/guardians and issue a mail citation, or, if the parent/ guardian is operating the vehicle, the citation must be issued directly. Municipalities may adopt the statute by reference as an ordinance violation (T.C.A. §§ 55-52-201, 202).

Railroad Crossings Protection
T.C.A. § 55-8-146 provides that municipalities may erect stop signs at dangerous railroad crossings with the approval of the state Department of Transportation. It was also held by the Tennessee Supreme Court in *Southern Railway Co. v. Knoxville*, 223 Tenn. 90, 442 S.W.2d 619 (1968), that a general grant of police power empowers a municipality to require by ordinance a railroad to pay for and install crossing gates or signals if they are reasonably required to protect motorists. However, T.C.A. § 65-11-113 authorizes the state, at the expense of the railroad, the state, and the municipality, to require railroads to install certain markings and signals at an unmarked crossing where there has been a fatality and where other conditions outlined in that statute exist. The extent to which those statutes and that case may conflict is not clear.

Establishing Speed Zones

Speed Zones in General
Municipalities are authorized to establish upper speed limits not exceeding 55 mph on the streets within their jurisdictions that are not part of an interstate or controlled-access highway in the state road and highway system. T.C.A. § 55-8-152(c) sets the speed limit on state controlled-access highways and interstates at 70 mph. The minimum speed in a left lane is 55 mph. T.C.A. § 55-8-152(h) provides that only the state Department of Transportation may set speed limits on access-controlled state highways and interstates. It also is authorized to set minimum speed limits "below which no person shall drive a vehicle except when necessary for safe operation or in compliance with the law." The minimum speed limit must be set on the basis of an engineering and traffic investigation showing that "slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic ..." Presumably, that authority would not extend to interstate or controlled-access highways in the state road and highway system. A municipal governing body must have an engineering and traffic investigation done that shows the public safety requires a lower speed limit on a state highway in the municipality before the governing body may lower the speed limit below the state-set speed limit. These investigations must be done in accordance with engineering practices and with the Manual on Uniform Traffic Control Devices. Signs and markings also must conform to the MUTCD. Municipalities have the authority to erect the appropriate speed limit signs and traffic signals (T.C.A. §§ 55-8-152--154).

School Zones
With the exception of municipalities in Hawkins and Sullivan counties, municipalities are authorized to set special speed limits on streets adjacent to school grounds (except at school entrances and exits from controlled-access highways in the state highway system where the Department of Transportation has the authority to set speed limits). The special speed limits must be:

- Based on an engineering investigation;
- Not less than 15 mph; and
- In effect only when the proper signs are posted with a warning flasher or flashers in operation and only while children are actually present.

Where the municipal legislative body has not set a special speed limit, a person is *prima facie* guilty of reckless driving if exceeding 15 mph:

- When passing a school during recess while a warning flasher or flashers are in operation; or
- Ninety minutes before or after the opening or closing of a school when children are actually going to or leaving the school.

The same rules apply to municipalities in Hawkins and Sullivan counties except that the distance from schools at which the municipality may set speed limits is one-quarter mile, and the period before the opening and closing hours of school is 40 minutes (T.C.A. § 55-8-152).

Tennessee Department of Transportation
The Tennessee Department of Transportation (TDOT) has the authority to lower the speed limit:

- On the state system of roads and highways as it deems appropriate due to conditions affecting the roadway or traffic; and
- "In business, urban, or residential districts or at any congested area, dangerous intersection, or whenever and wherever the department shall determine, on the basis of an engineering and traffic investigation, that the public safety requires a lower speed limit."

Apparently, this is limited to the state system of roads and highways. The violation of TDOT-set speed limits where construction workers are present is a Class B misdemeanor, carrying a fine of from $250 to $500 (T.C.A. §§ 55-8-152–153).

Traffic Citations

Traffic Citations in Lieu of Arrest
When a person violates any traffic ordinance or regulation in the presence of a law enforcement officer, member of the fire or building department designated a special city police officer, or transit inspector employed by a public transit system, the officer or inspector may issue a citation or complaint in lieu of arresting the offender and having a warrant issued. The general provision in state law authorizing the issuance of a citation rather than a custodial arrest (T.C.A. § 40-2-118) does not apply to citations for traffic or financial responsibility violations. Traffic and financial responsibility citations must be issued under T.C.A. § 55-10-207.

A copy of the citation, stating the offense charged and where and when to appear in court, must be given to the offender (T.C.A. § 7-63-101).

Financial Responsibility
T.C.A. § 55-12-139 requires law enforcement officers to require evidence of financial responsibility from a person charged with a moving traffic violation under state law, a local ordinance regulating traffic, or at the time of an accident causing injury or death or property damage greater than $50. "Financial responsibility" generally means documentation of insurance. Failure to show evidence of financial responsibility is a Class C misdemeanor punishable by a fine of up to $100. T.C.A. § 16-18-302 authorizes cities to adopt the financial responsibility law by reference. The maximum fine for an ordinance violation is $50. T.C.A. § 55-12-139 also requires a court to dismiss a first-time offense if the offender, before the court date, submits proof of compliance as of the date of the violation, and it allows discretion for subsequent violations. No costs or litigation tax may be assessed for dismissal.

Uniform Traffic Citations
Municipal law enforcement officers may use a uniform traffic citation form prescribed by the Department of Safety (T.C.A. § 55-10-208).

Cancellation of Traffic Citation
A person is guilty of a misdemeanor if he or she cancels a traffic citation or seeks to have one canceled by any method other than that established by law. Records of citations required by T.C.A. § Title 55, Chapters 8 and 10, and issued by city police officers must be audited by the city's fiscal officer (T.C.A. § 55-10-204).

Citation Based Upon Traffic Camera
A traffic citation based solely upon evidence from a surveillance camera must be considered a nonmoving violation.

An employee of the applicable law enforcement agency must review video evidence and determine whether a violation occurred. If the law enforcement employee determines that a violation did occur, a citation must be sent by first-class mail to the registered owner of the vehicle. The citation must allow for payment within 30 days of mailing. No additional penalty or costs may be assessed for nonpayment unless a second notice is sent by first-class mail allowing for an additional 30 days. Emergency vehicles with active emergency lights, vehicles moving through the intersection to avoid an emergency vehicle, vehicles under police escort, and vehicles in funeral processions are exempt.

The owner of the vehicle is responsible for the citation unless on or before the court date the owner provides an affidavit stating the name and address of the person who leased, rented, or had care, custody or control of the vehicle at the time of the violation. The owner also may provide an affidavit stating that the vehicle had been stolen prior to the time of the violation (T.C.A. § 55-8-198).

A municipality may not reduce the time of the yellow light at camera-enforced intersections to increase the number of traffic violations (T.C.A. § 55-8-110).

Regulation of Bicycles

Bicycles Subject to Traffic Rules
T.C.A. §§ 55-8-171–178 contain special rules for the operation of, and equipment required on, bicycles. Generally, bicycle riders are granted the same rights and are subject to the same rules of the road that apply to drivers of motor vehicles, except those that do not by their nature apply (T.C.A. § 55-8-152). T.C.A. §§ 55-9-602–603 contain an outline for the distribution of fines and costs for convictions under that law.

Child bicycle safety regulations also are found at T.C.A. §§ 55-52-101, *et seq.* These regulations:

- Require children 16 years of age and under to wear a helmet that meets standards contained in the law when riding a bicycle upon any highway, street or sidewalk;
- Require any passenger on a bicycle who weighs less than 40 pounds or is less than 40 inches tall to be properly seated and adequately secured to a restraining seat; and
- Prohibit the rental or lease of any bicycle to, or use by, any person under 16 years of age unless the person is in possession of a protective helmet of good fit, or the rental or lease includes such a helmet "and the person intends to wear the helmet ... at all times while operating or being a passenger on the bicycle."

Any parent or guardian of a person under 12 years of age who knowingly permits that person to ride or be a passenger on a bicycle in violation of these regulations is subject to a civil penalty of $2. Any other adult person who permits any person to ride or be a passenger on a bicycle in violation of these regulations is subject to the same penalty; however, the offender must be issued a warning on the first offense and a citation on the second and any subsequent offense. No arrest or custody of the offender is permitted in either case.

T.C.A. §§ 55-8-171–177 make the state's traffic regulations applicable to bicycles. Motorists overtaking a bicycle traveling in the same direction must leave a safe distance of at least three feet between the vehicle and bicycle. Violation is a Class C misdemeanor (T.C.A. § 55-8-175).

Parking Regulations

Parallel parking generally is allowed only on the right side of a street, except a city may, by ordinance, permit parking on the left side of one-way streets and angle parking on any street. The state Department

of Transportation must approve angle parking on federal and state highways (T.C.A. § 55-8-161).

Use of Wheel Immobilizers
A municipality apparently may regulate the commercial use of wheel immobilizers on motor vehicles (T.C.A. § 6-54-132).

Handicapped Parking
Any person without the appropriate license plate or placard who parks in a parking space designated with the wheelchair-disabled sign may be punished in a court with state law jurisdiction by a $200 fine, which cannot be waived, and up to five hours of community service work assisting disabled people (T.C.A. § 55-21-108, T.C.A. § 55-8-160(a)(15)). In addition to the fine, the vehicle may be towed. Signs designating handicapped parking must indicate that improperly parked vehicles may be towed and the driver fined $200. The signs also must provide the name and number of the property owner, lessee, or agent in control of the property (T.C.A. § 55-21-108(a)).

A person is "disabled" for purposes of handicapped parking if he or she is a paraplegic or amputee, cannot walk 200 feet without stopping to rest, or has not less than 20/200 vision with corrective lenses (T.C.A. § 55-21-102).

A disabled veteran or physically handicapped person displaying a certificate or special license plate is relieved "from liability for any violations with respect to parking" except parking in a designated fire lane or a lane required for morning or afternoon rush-hour traffic (T.C.A. § 55-21-106).

T.C.A. § 55-21-105 purports to regulate the number of accessible and van accessible disabled parking spaces that must be provided, along with certain dimensions for van accessible spots.

Any municipality, county, or metropolitan government may establish a special unit to enforce disabled parking laws and ordinances. Any person age 21 or older, regardless of disability status, may be appointed as a volunteer to enforce parking laws for the disabled. Members of the special enforcement unit must wear a distinctive piece of clothing, law enforcement insignia, and a badge while on duty. These provisions apply only in municipalities, counties, and metropolitan governments that adopt them by a two-thirds vote (T.C.A. § 55-21-110).

Fees Prohibited For Disabled Parkers
A municipality may not charge any parking fee to a disabled vehicle with a handicapped placard or license plate when the disabled person actually is the driver or a passenger (T.C.A. § 55-21-105).

Parking Near Fire Hydrants
A municipality may restrict parking near a fire hydrant only within 7.5 feet to 15 feet of the hydrant. The restricted distance must be appropriately identified (T.C.A. § 55-8-160(a)(4)).

Operation of Motor Vehicles

Following Fire Apparatus
Drivers other than those on official business are prohibited from following within 500 feet of any fire apparatus answering a call and may not park in the same block as the fire equipment. No driver may cross an unprotected fire hose without permission from the fire department official in command (T.C.A. §§ 55-8-168–169).

Transporting Children in Pickup Trucks
It is a Class C misdemeanor under state law to transport upon any street or highway of any city a child under age 12 in the bed of a pickup truck of less than three-quarters of a ton. A city may, by ordinance, make it a local violation to transport upon any city street or highway a child between 6 and 12 years old in the bed of a pickup truck of less than three-quarters of a ton. However, people transporting children in parades or for agricultural purposes are exempt from this provision (T.C.A. § 55-8-189).

Vehicle Weight
Maximum weight, height, and length limits for trucks and trailer trucks are established by state law. It is the duty of municipal officers to prohibit any vehicle from exceeding such limits on a public highway unless a special permit has been issued by the state commissioner of Transportation (T.C.A. §§ 55-7-101, *et seq.*).

Accident Report
Any automobile accident that involves bodily injury, death, or damage to a person's property of more than $400 must be reported. Reports must include information on insurance policies of the drivers, including the name of the insuror, and a copy of the certificate of compliance with the financial responsibility law. An investigating officer must send a copy of the report to the state Department of Safety within seven days of completing the investigation (a copy is to be kept in the district Highway Patrol office). Standard report forms are supplied to any city police department by the Department of Safety. This report is a public record (T.C.A. § 55-10-107, T.C.A. § 55-10-108(b), T.C.A. § 55-10-111, T.C.A. § 55-12-104).

Accident Response Fees Prohibited
A municipality may not impose an accident response service fee on a driver or owner of a motor vehicle or an insurance company but may bill them for ambulance services provided in response to a motor vehicle accident (T.C.A. § 55-10-108).

Emergency Vehicles
T.C.A. § 55-8-108 allows the driver of an authorized emergency vehicle responding to an emergency call, pursuing a suspected law violator, or responding to a fire alarm when the vehicle is making use of an audible and visual signal to:

- Disregard parking and standing regulations;
- Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
- Exceed speed limits as long as life or property is not thereby endangered; and
- Disregard movement and turning regulations.

While parked or standing, an authorized emergency vehicle must use only visual signals.

The same statute provides that these provisions "shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of the driver's own reckless disregard for the safety of others."

This statute also limits the liability of law enforcement officers and their employing governments for injuries to both suspected law violators and to innocent third parties arising from their pursuit of fleeing suspected law violators, in the following language:

> Notwithstanding the requirement of this section that drivers of authorized emergency vehicles exercise due regard for the safety of all persons, no municipality or county ... nor their officers or employees shall be liable for any injury proximately or indirectly caused to an actual or suspected violator of a law or ordinance who is fleeing pursuit by law enforcement personnel. The fact that law enforcement personnel pursue an actual or suspected violator of a law or ordinance who flees from such pursuit shall not render the law enforcement personnel or his or their employers liable for injuries to a third party proximately caused by the fleeing party unless the law enforcement personnel were negligent in his or their conduct, and such negligence was a proximate cause of the injuries to the third party.

However, under *Haynes v. Hamilton County*, 883 S.W.2d 606 (Tenn. 1994), the above limitation on the liability of law enforcement officers and their employing governments in third-party injury cases is quite narrow. There, the Tennessee Supreme Court pointed out that while the above limitations on liability provided absolute immunity to local governments for the injury or death of a fleeing suspect, they did not necessarily have the same effect with respect to innocent third parties injured in police pursuits. The court said that in those cases, negligent "conduct" within the meaning of that statute could include the police officer's decision to initiate or to continue the pursuit. The determination of whether such a decision is reasonable must weigh the risk of injury to the third party against the interest in apprehending suspects. "Factors relevant to that determination include the speed and area of the pursuit, weather and road conditions, the presence or absence of pedestrians and other traffic, alternative methods of apprehension, applicable police regulations, and the danger posed to the public by the suspect being pursued." Those factors are not exclusive, continued the court, and "overall, a police officer's conduct should be viewed in light of how a reasonable, prudent police officer would respond under the circumstances and not judged with the perfect vision afforded by hindsight."

Municipal hot-pursuit policies should be drafted, and police officers should initiate and continue hot pursuits with *Haynes* in mind.

Failure to Yield to Emergency Vehicles
Failure to yield to an approaching emergency vehicle or failure to move over or slow down for a stopped emergency vehicle is a Class B misdemeanor (T.C.A. § 55-8-132). Therefore, municipal ordinances regulating these offenses are invalid and unenforceable (See T.C.A. § 16-18-302).

Funeral Processions
T.C.A. § 55-8-183 governs the identification, escort, operation, and conduct of traffic with respect to funeral processions. Any municipality may adopt the provisions of this law by a two-thirds vote of its legislative body. The presiding officer must certify its adoption to the secretary of state.

This law provides that where a funeral procession is properly identified, it is an offense punishable by a fine of up to $50 for the operator of a motor vehicle to:

- Knowingly fail to yield the right-of-way to the procession across an intersection;
- Pass or attempt to pass the procession from behind on a two-lane street, road or highway; or
- Drive or attempt to drive between the vehicles in the procession.

For the purposes of this law, a "properly identified" funeral procession must be "indicated by a flashing amber light, an auditory signaling device mounted on the lead vehicle, or by other properly identified escort, and a flag or other appropriate marking device on each vehicle in the procession indicating that such vehicle is part of the funeral procession."

Many municipalities provide police escorts to funeral processions. They may be held liable under the Tennessee Governmental Tort Liability Act for negligent escort. (*Anderson v. City of Chattanooga*, 978 S.W.2d 105 (Tenn. App. 1998)). Generally, T.C.A. § 55-8-153 does not appear to affect the liability of municipalities that provide funeral escorts. Whether or not a municipality provides funeral escorts, it probably has the right to impose reasonable time, place, and manner restrictions on funeral processions.

Oncoming traffic meeting a funeral procession is no longer prohibited from pulling over and stopping. Motorcycle escorts of funeral processions may have a green strobe light of a type approved by the county sheriff that is used only when escorting a funeral. Motorcycle escorts also may have a bell or siren approved by the sheriff that is used only when escorting a funeral procession. Motorcycle escorts may operate between lanes or rows of vehicles (T.C.A. § 55-8-183).

T.C.A. § 39-17-317 makes it a Class C misdemeanor to make any utterance, gesture, or display that is offensive to the sensibilities of an ordinary person within 500 feet of a funeral, funeral procession, burial or viewing of a dead person.

Disposal of Abandoned, Immobile or Unattended Motor Vehicles
A municipal police department may “take into custody” and dispose of certain abandoned, immobile or unattended vehicles on public or private property. Procedures for doing this, including definitions, notices, sale or demolition, and other detailed provisions may be found in T.C.A. §§ 55-16-101, *et seq*.

Miscellaneous

Equipment on Emergency Vehicles
Every police and fire department vehicle must have a bell, siren, or exhaust whistle approved by the state Department of Safety or local police authorities (T.C.A. § 55-9-201). Blue flashing lights may be used only by full-time, salaried, law enforcement officers except in Knox County where reserve and auxiliary officers who are in uniform and operating a police vehicle may use them in conjunction with red flashing lights (T.C.A. § 55-9-414).

Authorized Emergency Vehicles
Rescue and emergency response vehicles owned by a state-chartered rescue squad, emergency lifesaving crew, or active unit of the Tennessee Association of Rescue Squads are included in the definition of "authorized emergency vehicle" (T.C.A. § 55-8-101(2)(C)(ii)).

Highway Safety Programs
Tennessee municipalities are authorized to carry out highway safety programs within their jurisdictions. These programs must be approved by the governor and must be in accordance with the secretary of commerce’s uniform standards contained in provisions of the Federal Highway Safety Act of 1966 (T.C.A. § 55-20-101).

Stopping Solid Waste Vehicles on Public Streets
Certain restrictions against parking on public streets do not apply to garbage trucks collecting trash. These vehicles must have flashing hazard lights that are activated when stopping or stationary, and they must be clearly viewable from 200 feet in each direction while stopped. Special lighting also is required in accordance with rules promulgated by the state Department of Safety (T.C.A. § 55-8-158, T.C.A. § 55-8-160).

Street Sweepers
T.C.A. § 55-8-190 provides that street sweepers may travel below the lawful minimum speed and stop to collect debris at any time in residential areas and in all nonresidential areas except between 6:30 a.m. and 8:30 a.m. and between 3:30 p.m. and 6:00 p.m. on any weekday. These limitations do not apply if there has been an emergency or event that would make street sweeping necessary.

Engine Compression Brakes ("Jake Brakes")
A municipality may implement a state law within the municipality that requires truck tractors and semitrailers that use engine compression brakes to have an approved muffler (any muffler that complies with Federal Motor Carrier Safety Regulations on noise emissions compiled in 49 C.F.R., 325.1, *et seq.*) by requesting the state Department of Transportation to place signs. The municipality must pay for the signs (T.C.A. § 55-7-117).

Regulation of Electrical Personal Assistive Mobility Devices (EPAMDs)
Municipalities may reasonably regulate but not generally prohibit EPAMDs. The use of EPAMDs may be restricted or excluded in certain areas in the interest of public safety or the preservation of natural areas, but only to the extent that bicycles are restricted or excluded. Users must obey speed limits and yield to pedestrians and human-powered devices. EPAMDs are not considered motor vehicles under state law, so registration and licensing requirements do not apply. The device or the operator must be equipped with reflectors and lights when the device is operated one-half hour before and after sunset and one-half hour before sunrise (T.C.A. §§ 55-53-10l, *et seq.*).

Regulation of Low-speed and Medium-speed Vehicles
Municipalities may prohibit the operation of low-speed or medium-speed vehicles on any street in their jurisdiction in the interest of public safety. A "low-speed vehicle" is any four-wheeled electric or gas vehicle, except golf carts, whose top speed is 25 mph or less but greater than 20 mph (medium speed is greater than 30 mph but not more than 35 mph). Low-speed vehicles may be operated only on streets with a posted speed limit of 35 mph or slower and medium speed only on streets of 40 mph or lower. Operators must possess a Class D driver's license (T.C.A. §§ 55-1-122, 55-8-101, 191).

Chapter Twenty

Parks and Recreation

Programs and Services

Municipal recreational programs are authorized by an optional general law. The law also authorizes joint programs by two or more cities. A city's governing body has the option to retain control of such a program, enter into an agreement with one or more municipalities for operation under a joint board or authority, or place it under a recreation board or commission, school board, or park board (T.C.A. §§ 11-24-103–105).

To protect property under its jurisdiction, a recreation board may promulgate rules to be enforced by local law enforcement officials. Maintenance and operation of a recreational system may be funded from property taxes, general revenue, user fees and charges, or any other appropriate source. Any city may levy a special tax earmarked for playground and recreational purposes (T.C.A. §§ 11-24-101–112). Cities or recreation boards may contract with businesses, civic groups, or individuals for volunteer services to maintain and improve parks (T.C.A. § 11-24-202).

The Parks and Recreation Technical Advisory Service (PARTAS) in the Department of Environment and Conservation helps municipalities establish and operate parks and recreational programs (T.C.A. § 11-9-108).

Conservation boards are authorized to develop and maintain county parks and recreational areas. These boards are empowered to enter into agreements with small cities to provide them with parks and recreational services (T.C.A. §§ 11-21-111–112).

Recreation Grants

T.C.A. §§ 11-9-201, *et seq.*, establish a program of matching recreation grants to cities and counties. Grants are for a three-year period and must be used to hire a recreation director, establish a recreation office, and hire other needed personnel. In the first two years, the community must match up to $50,000 from the state. In the third year, the community must fund the program completely or repay the state. Grants are awarded annually, with one award generally made in each grand division. Multigovernment proposals have priority.

Park Acquisition Grants
T.C.A. § 67-4-409(a) and (i) impose a real estate transfer tax of 37 cents per $100 and earmark revenues from 1.75 cents to create a local parks acquisition fund. The fund provides matching grants to purchase land for parks, natural areas, and greenways and for capital projects in those areas. Grant funds may be matched with land not previously used for park purposes, rather than money. Up to 3.5 percent may be deducted from the fund to cover administrative expenses. The environment and conservation and agriculture commissioners and the Wildlife Resources Agency director promulgate regulations, set priorities, and approve each grant.

The Department of Environment and Conservation also manages procedures for awarding federal grants from the Natural Resources Trust Fund (T.C.A. §§ 11-14-301–307).

Miscellaneous

Weapons in Public Parks
With certain limited exceptions, it is an offense to possess or carry a weapon on the grounds of any public park or playground in any municipality if the weapon is not used for instruction, display, or sanctioned ceremonial purposes. Municipalities are required to post signs at all entrances and on any building or structure stating that violating this law is a misdemeanor and punishment is authorized. A municipality may exempt itself from the sign requirements (presumably by some legislative act) (T.C.A. § 39-17-1311).

School Property
Boards of education may let any city recreational system use any school building, grounds, or equipment if the recreational use does not interfere with school purposes (T.C.A. § 11-24-110).

Swimming Pools
City swimming pools must comply with the Hotel, Food Service Establishment, and Public Swimming Pool Inspection Act of 1985. The commissioner of health may grant variances and waivers that do not result in a health or safety hazard (T.C.A. § 68-14-303(3)).

Any public swimming pool owned by a "public entity" that is more than 30,000 square feet must have a full-time, staffed lifeguard station for each 6,000 square feet, or major portion thereof, available for public use. The commissioner of environment and conservation may increase the size of the area requiring a single lifeguard station (T.C.A. § 68-14-402).

Forests
Cities are authorized to purchase and maintain forestry land under regulations approved by the state forester. The governing body may act after a two-week public notice that such a purchase is being considered. Controlling the land's use and disposing of income from it are responsibilities vested in the governing body (T.C.A. §§ 11-23-101–105).

Liability
Landowners, including governmental entities, are free from liability for giving permission to another person for use of the landowner's land for hunting, camping, canoeing, and a number of other specified recreational activities, except:

- For willful or wanton conduct or gross negligence resulting in failure to warn of a dangerous condition, use, structure, or activities;
- Where the permission to make recreational use of the property was for a fee or price; and
- To people to whom the owner owed a duty to keep the premises safe or to warn of danger (T.C.A. §§ 70-7-101–104).

Chapter Twenty-One

Code Enforcement and Building Inspection[19]

A discussion of the rules for adopting model codes is in Chapter 4, "Ordinances and Codes."

Federal and State Pre-emption

Mobile Homes

The state establishes standards for electrical, gas, and oil systems in mobile homes and exempts state-approved systems from compliance with conflicting or more restrictive local ordinances (T.C.A. § 68-102-147(h)).

State statutes pre-empt local authority in some building code matters. For example, mobile home anchoring regulations must comply with the Tennessee Manufactured Home Anchoring Act (T.C.A. §§ 68-126-401–412).

Federal statutes also pre-empt local authority regarding manufactured home construction. 41 U.S.C. § 5403(d) sets manufactured home construction and safety standards. It provides

> Whenever a federal manufactured home construction and safety standard established under this chapter is in effect, no state or political subdivision of a state shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the federal manufactured home construction and safety standard.

The federal manufactured home construction and safety standards are found at 24 C.F.R. § 3280.

Statewide Building Standards

T.C.A. §§ 68-120-101, *et seq.*, authorize the state fire marshal to adopt minimum statewide building construction safety standards and to adopt rules and regulations pertinent to those standards. Under rules of the Tennessee Department of Commerce and Insurance, Division of Fire Prevention, Chapter 0780-2-2 (April 1999), the state fire marshal has adopted:

- *The Standard Building Code*, 1999 edition, published by the Southern Building Code Congress International, Inc., and
- *Uniform Fire Code* (NFPA No. 1– 2003), including each reference to NFPA 1, Chapter 43, thereof, published by the National Fire Protection Association. Each reference in NFPA 1, Chapter 43, to an NFPA code or standard shall be deemed to be the edition thereof printed in the *National Fire Codes*, 2003 edition.

The state rules do not adopt any provision of those publications that establishes:

- An option or recommended, rather than mandatory, standard or practice, except for Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems (NFPA 25-1995); or
- Any agency, procedure, fees, or penalties for administration or enforcement purposes.

The minimum standards adopted by the state fire marshal do not apply to one-family and two-family dwellings, nonresidential farm buildings, temporary buildings used exclusively for construction purposes, manufactured homes and recreational vehicles, and buildings or facilities reviewed and licensed by the board for licensing health care facilities.

The minimum standards adopted by the state fire marshal do "apply to municipal, county, state and private buildings, unless otherwise provided by statute." However, they do not apply to any building within a local government, other than state buildings or educational occupancies, for which certification has been made

[19]For more information on adopting standard codes, see the MTAS publication *Adopting Building Codes and Building Code Amendments by Reference* by Steve Lobertini.

in writing to the state fire marshal that:

1. It has adopted:
   a. The International Building Code published by the International Code Council; and
   b. Either the International Fire Code published by the International Code Council or the Uniform Fire Code published by the National Fire Protection Association.
2. It is adequately enforcing its own code and is performing any reviews of construction plans and specifications required by the state fire marshal. (The state fire marshal must audit the records of each local government that chooses to enforce its own code at least once every three years to ensure that it is adequately performing its enforcement functions.)

Statewide codes adopted by the state fire marshal apply if:

1. The local government's building construction safety code publications are not current within seven years of the latest edition, unless otherwise approved by the state fire marshal; or
2. After written notice and hearing, the state fire marshal finds that the local government is not adequately performing its enforcement functions.

Amended versions of building and fire codes must afford a reasonable degree of safety to life and property.

Tennessee Attorney General's opinion dated March 11, 1985, opines that a municipality may not require a county to obtain a building permit for construction of a county building used in the county's governmental capacity when that requirement is not authorized by statute. T.C.A. §§ 68-120-101, *et seq.*, are ambiguous with respect to such a requirement. However, it does appear to be the intent of T.C.A. §§ 68-120-101, *et seq.*, that municipal building and fire codes that meet the requirements of that statute and of Rule 0780-2-2 apply to municipal, county, state, and private buildings. If for some reason the municipal building and fire codes did not apply, presumably, municipal fire prevention officials in their capacities as assistants to the state fire marshal under T.C.A. § 68-120-108 could enforce against municipal, county, state, and private buildings the statewide building construction safety standards adopted by the state fire marshal.

Condominium Ownership

A building code or land use ordinance may not prohibit the condominium form of ownership or impose any requirement on a condominium it "would" not impose on an identical development under a different form of ownership (T.C.A. § 66-27-206).

Notification that Property Is Downstream of a Dam

T.C.A. § 69-12-127 requires local governments that issue building permits to inform an applicant when the proposed construction or alteration is located downstream of a dam and would be affected by failure of the dam. The Department of Environment and Conservation must provide each county executive with an inventory of dams in the county, and the county executive must provide it to municipalities that issue building permits. The executive officer of the municipality must provide it to the building official.

Inspectors

Certification of Building, Fire, Mechanical, and Plumbing Inspectors

Since June 30, 1995, all existing municipal and county inspectors in Tennessee have had to be certified by the state fire marshal before enforcing building and fire codes. Any inspector hired after July 1, 1994, has 12 months from the date of employment to receive certification, which is valid for three years. Exemptions apply to people who are:

- 60 years old and have been continuously employed as a building inspector for seven years; or
- 50 years old and have been employed as a building inspector for one year and were licensed by the state as an electrical, plumbing, or heating/air conditioning contractor before July 1, 1993.

The state fire marshal sets the certification standards, but he or she must accept certification from the Southern Building Code Congress International, the International Code Council, and the National Fire Protection Association as satisfying standards. The fire marshal is to provide training courses, issue identification cards, and revoke certification of inspectors who fail to enforce codes properly (T.C.A. § 68-120-113).

Municipal plumbing and mechanical inspectors must also be certified in a manner similar to building and fire inspectors (T.C.A. § 68-120-118).

Shared Inspectors
T.C.A. § 6-54-116 applies to cities with populations of less than 25,000 and provides "It shall be lawful for two or more municipalities, none of which exceeds 25,000 in population, to engage jointly one building inspector and to make an agreement specifying how such inspector shall be paid for his services and how his time or services shall be allocated to the respective municipalities." T.C.A. § 68-102-107 allows certified building and fire safety inspectors to perform inspections for local governments other than the one by which they are employed.

Residential Rental Registration and Inspection
T.C.A. § 66-28-107 requires landlords of one or more dwelling units in Nashville to register with the codes department. T.C.A. § 6-54-511 appears to place restrictions on inspections of residential rental properties in Davidson and Shelby counties and in Oak Ridge and Goodlettsville. T.C.A. §§ 13-21-301, *et seq*., however, enact residential rental inspection provisions for Nashville and Oak Ridge that are supplemental to other authority these municipalities might have.

Regulation of Contractors

Licensing
T.C.A. §§ 7-62-101, *et seq.*, allow municipalities and counties to license "residential, commercial, or assembly builders and residential, commercial, and assembly maintenance and alteration contractors." However, municipalities and counties are prohibited from imposing upon HVAC, plumbing, and electrical contractors any licensing requirements (i.e., tests, examinations, etc.) other than state requirements (T.C.A. § 7-62-104(7)). Municipalities and counties also are prohibited from discriminating against a state licensee based on nonresidency in the municipality or county (T.C.A. § 62-6-111(i)(2)(c). Municipalities may require a permit bond for contractors to ensure compliance with applicable laws and ordinances. Approving the permit bond program requires a two-thirds vote of the governing body (T.C.A. § 62-6-137).

Contractors' Permits
An optional general law available for adoption by ordinance authorizes an unlimited number of building permits for general home repairs and improvements to be issued to state-licensed contractors. No more than 10 active permits may be issued to certain unlicensed contractors (T.C.A. §§ 7-62-201, *et seq.*).

A building permit official must advise any permit applicant of the provisions of this law if it has been adopted by ordinance by the city (T.C.A. §§ 7-62-201, *et seq.*).

Workers' Compensation Coverage Prerequisite to Issuing Permit
Officials who issue building permits are required to make sure contractors have a certificate of compliance, a certificate of insurance, a workers' compensation policy, or a number from a certificate of compliance from the Department of Labor or other evidence of workers' compensation coverage before issuing a permit (T.C.A. § 13-7-211).

Fire Prevention

Municipal fire prevention and building officials, fire chiefs, and mayors of cities without fire departments are given "concurrent jurisdiction" to enforce the provisions of the basic law for the state fire marshal's authority, which is T.C.A. §§ 68-120-101, *et seq.* This chapter supersedes "all less stringent provisions of municipal ordinances" (T.C.A. § 68-120-106).

A fire inspector may issue a citation when a property owner fails to comply with a written order by the inspector to remedy an inherently dangerous building or a building containing flammable matter. The inspector or district attorney also may file a petition for an injunction against any person responsible for a dangerous or defective building (T.C.A. § 68-102-117). In incorporated cities or places having either a fire marshal or a fire department, the city will appoint either the fire marshal or the fire chief as an assistant to the commissioner of commerce and insurance, subject to his or her direction and the duties and obligations imposed upon the commissioner. In cities with no fire marshal, a fire marshal from another local government may be an assistant to the state commissioner on behalf of that city (T.C.A. § 68-102-108).

Smoke detectors that are required in one- and two-family dwellings must be installed in accordance with the 2003 Residential Code published by the International Code Council and the manufacturer's instructions unless these conflict with applicable codes adopted by the fire marshal. Smoke detectors may

be battery operated when installed in dwellings without commercial power (T.C.A. §§ 68-102-151 and 68-120-111).

Measures for Protection of the Public

Theaters
It is the duty of the "corporate authorities of any city or town" to examine theaters and other public entertainment facilities to determine if all necessary safeguards are provided to avoid "accident by fire or panic." If such facilities are deficient in any respect, it is likewise their duty to require "such alterations as will [promote] the public safety." Plans for such buildings must be approved by the "proper municipal authorities" before construction begins, and failure to make prescribed alterations will result in license forfeiture and building closure (T.C.A. § 68-101-102).

Public Garages in Buildings Occupied for "Habitational Purposes"
State law contains detailed prescriptions for constructing a public garage as part of a building used for "habitational purposes" and deals with fire walls, fireproof materials, sprinklers, etc. (T.C.A. § 68-16-103(a)).

Energy Conservation in New Buildings
The state legislature adopted by reference the 2003 International Energy Conservation Code published by the International Code Council as the minimum requirements for effective use of energy in new buildings (T.C.A. § 4-3-734). Local jurisdictions apparently have the option of adopting the 2000 International Energy Conservation Code with 2002 amendments, published by the International Code Council, rather than enforcing the code adopted by the state. Amendments to these codes cannot become effective until approved by the General Assembly or one of its committees. The code adopted applies to "... new buildings and structures or portions thereof and additions to existing buildings that provide facilities or shelter for public assembly, educational, business, mercantile, institutional, storage, and residential occupancies, as well as those portions of factory and industrial occupancies designed primarily for human occupancy."

Nonresidential farm buildings, temporary buildings used exclusively for construction, and other specifically listed uses are exempted. Apparently, one of these codes must be adopted and enforced by all local governments, even if the local government has not otherwise adopted or enforced other building codes (T.C.A. §§ 13-19-101, *et seq.*).

A municipality may charge a fee to cover administrative costs of enforcing this code. The fee "may not accrue to the general revenue of the local government or by any other application become subject to laws regulating local taxation" (T.C.A. § 13-19-107).

Handicapped Access
The local building inspector is responsible for requiring construction, enlargement, or substantial alteration of new public buildings to meet the minimum specifications in the 2002 North Carolina Accessibility Code with 2004 amendments, the Uniform Federal Accessibility Standards, or the Americans with Disabilities Act Accessibility Guidelines. This responsibility is shared with the State Building Commission for state buildings and with the state fire marshal for buildings subject to his or her review. These requirements apply to buildings constructed by local governments and other publicly used buildings, such as theaters, restaurants, hotels, factories, office buildings, stadiums, hospitals, voting areas, shopping areas, and convention centers. Provision is made for waivers under specified limited circumstances, and local governments are exempted from fines or penalties for noncompliance (T.C.A. §§ 68-120-201–205).

Also, the Americans with Disabilities Act requires local governments to comply with either the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines in constructing or substantially altering any building, facility, or structure.

Code Enforcement

Model Building Codes, Utility Codes, Etc.
T.C.A. § 6-54-119 requires municipalities to retain as a public record a copy of standard model codes they adopt. (See discussion of adoption of model codes in Chapter 4, "Ordinances and Codes.") State law requires that citations for violations of standardized model codes contain a notation identifying specifically

where a copy of the code is located and the hours during which it may be inspected (T.C.A. §§ 6-54-501, *et seq.*).

Modular Building Standards
The commissioner of commerce and insurance is empowered to set standards for constructing and installing modular building units and to provide for their inspection. No local standard relative to modular building units shall be effective unless it is identical to one established by the commissioner. A city may make inspections and charge a fee only if the local standard is identical. The fee must be equal to the fee for similar inspections of conventional housing. Any modular building unit bearing an approval insignia issued by or on behalf of the commissioner shall be deemed to comply with any local standard. Local zoning requirements, fire zones, subdivision control, and aesthetic requirements are reserved to cities, but they must be reasonable and uniformly applied. The commissioner may delegate inspection authority to local governments (T.C.A. §§ 68-36-303–304).

Lot Cleanup
Cities may require owners to clean up the property where trees, vines, grass, and brush are growing or trash and debris are accumulating. If an owner fails to clean up within 10 days after receiving notice to do so, the city may clean up the lot and assess the costs against the owner. The costs are collected with the lot's property tax bill and filed as a lien on the property. The municipality must wait until cumulative charges equal or exceed $500 before placing a lien on owner-occupied property for the costs. The municipality also may collect these costs in an action for debt filed in a court of competent jurisdiction (T.C.A. § 6-54-113).

Junk Vehicles
Municipal courts may issue orders to remove vehicles from private property when keeping the vehicle is in violation of an ordinance (T.C.A. § 55-5-122).

Slum Clearance
T.C.A. §§ 13-21-101, *et seq.*, provide authority for municipalities to adopt ordinances relating to structures within the city that are unfit for human occupation or use. The statute requires that the ordinance designate a public officer to exercise the ordinance's prescribed powers. Upon his or her own motion, a petition filed by five citizens, or the governing body's request, this officer may serve the owner with a complaint and notice of a public hearing to be held not less than 10 days or more than 30 days from the date the complaint is served. Following the hearing, the officer may order the owner to either repair or demolish the structure.

If the owner fails to comply with the order, the officer may undertake the repair or demolition and assess those costs against the owner. The sum owed, upon being certified to the municipal tax collector, becomes a lien on the property. A notice of lien should also be filed with the register of deeds. The costs, which may include reasonable fees for registration, inspections, and professional evaluations in addition to the costs of repairs, alterations, improvements, vacating and closing, and removal or demolition, shall be collected by the municipal tax collector or county trustee at the same time and in the same manner as property taxes. These costs also may be collected in an action for debt filed in a court of competent jurisdiction.

Dangerous Buildings
T.C.A. §§ 68-102-117, *et seq*., establish procedures that may be used by assistants to the state commissioner of commerce and insurance (generally, fire chiefs) to cause the removal or repair of dangerous buildings. The expense of the repair or removal may be charged to the owner. If the owner fails to pay within 30 days, the officer may place a lien on the property for the expenses plus a 25 percent penalty. The officer must file the lien in the county register's office to make it valid.

Administrative Inspection Warrants
T.C.A. § 68-120-117 authorizes the issuance of an administrative inspection warrant when an owner or person in charge of premises refuses consent to an inspection to determine compliance with safety codes or ordinances. The building official requesting the warrant must be certified under T.C.A. § 68-120-113. Any judge of a court of record, other official authorized to issue a search warrant, or a municipal judge who is a lawyer may issue the administrative inspection warrant.

Chapter Twenty-Two

Planning and Zoning[20]

Types of Planning Commissions

Planning commissions may be structured as municipal planning commissions or as regional planning commissions. Unincorporated communities may create community planning commissions (T.C.A. §§ 13-3-101–105, T.C.A. §§ 13-3-201–203, T.C.A. §§ 13-4-101–105).

Municipal Planning Commissions
A municipal planning commission is to be composed of five to 10 members determined by the "chief legislative body." One member is to be the mayor or someone designated by the mayor, and one is to be a member of the "chief legislative body" and selected by that body. The remaining members are to be appointed by the mayor. Appointment terms must be arranged so that one member's term expires each year. The legislative body determines whether and in what amount to compensate members. The mayor has authority to remove any appointed member "at his pleasure" (T.C.A. § 13-4-101).

This legislation is supplemental to and does not supersede private acts (T.C.A. § 13-4-105).

A planning commission may:

- Make reports and recommendations to the governing body about community development (T.C.A. § 13-4-103);
- Recommend building and financing programs for public improvements (T.C.A. § 13-4-103);
- Require public officials to furnish requested information (T.C.A. § 13-4-103);
- Adopt an official general plan for the municipality's physical development (T.C.A. §§ 13-4-201–203);
- Before construction, approve the location and extent of streets, parks, public spaces, public buildings and structures, and public and private utilities (T.C.A. § 13-4-104);
- Adopt and administer subdivision regulations (T.C.A. §§ 13-4-302–308); and
- Certify a zoning plan to the governing body (T.C.A. § 13-7-202).

Planning commissions and boards of zoning appeals must review all plans for installation or replacement of gates at gated communities and issue permits for these gates (T.C.A. § 13-8-103).

Single or Multicounty Regional Planning Commissions
The Tennessee Department of Economic and Community Development, with approval of the Local Government Planning Advisory Committee (LGPAC), may create and define the boundaries of planning regions. If a municipality elects to be included in a planning region, the commissioner of the Department of Economic and Community

Development shall appoint a regional planning commission of not fewer than five or more than 15 members from nominations by the chief elected officials of the county and the municipality (T.C.A. § 13-3-101, T.C.A. § 4-3-727).

Members of the county and municipal legislative bodies may serve on the commission, but their number must be less than a majority. They serve during their respective elected terms, and other citizen members are appointed for staggered four-year terms. Commission members may be removed only for cause and only after a due process hearing. County and municipal governing bodies participating in this type of regional planning commission may establish the compensation for each member nominated by that local government (T.C.A. § 13-3-101).

Such a commission functions as a planning and advisory body for counties and cities within the region. A municipality's legislative body may designate the regional planning commission to act as the municipal planning commission. A prime mission of the regional planning commission is to prepare and maintain a

[20]For a provision mandating the number of disabled parking spaces and nonaccessible spaces for parking lots, see T.C.A. § 55-21-105 and Chapter 19 of this handbook.

regional plan. Any parts of such a plan adopted by a regional planning commission designated as a municipal planning commission have the same force and effect as a plan prepared by a municipal planning commission (T.C.A. § 13-3-301).

Municipal Regional Planning Commissions
At the request of a municipality, the Department of Economic and Community Development may, with the LGPAC's approval, establish a planning region composed of a municipality that has created a planning commission and a territory no more than five miles beyond the municipality, but no farther than the municipality's urban growth boundary. It may designate the municipal planning commission a regional planning commission. At least one member of a municipal planning commission with five members and designated as a regional planning commission and at least two members of such a commission with more than five but fewer than 11 members must reside within the regional area outside the municipal boundaries served by the regional commission (T.C.A. § 13-3-102, T.C.A. § 4-3-727).

Design Review Commissions
T.C.A. § 6-2-201, part of the general law mayor-aldermanic charter, allows municipalities incorporated under that charter to establish a design review commission. This commission would develop general guidelines for the exterior appearance of nonresidential property, multifamily residential property, and entrances to nonresidential developments. A property owner may appeal this commission's decisions to the planning commission or, if there is not one, to the governing body.

T.C.A. § 6-54-132 provides similar authority for other municipalities. Under this section, the municipal governing body may designate the planning commission as the design review commission. If the municipality creates a separate commission, the mayor appoints members from municipal residents and must try to include persons with architectural or engineering knowledge and persons with experience in nonresidential building.

Training for Members of Planning Commissions, Boards of Zoning Appeals, and Staff
Members of planning commissions and boards of zoning appeals must attend a minimum of four hours of training in planning and zoning subjects within one year of their initial appointment and in each calendar year afterward. Full-time or contract professional planners, building commissioners, and administrators must attend eight hours of similar training each calendar year. A municipality may, by ordinance, opt out of these training requirements (T.C.A. § 13-3-101, T.C.A. § 13-4-101, T.C.A. § 13-7-205).

Public Works Projects

After a municipal planning commission adopts a comprehensive plan, no public works (public parks, buildings, structures, or public utilities) may be "constructed or authorized" unless the governing body or board (including the governing body or board of the state's political subdivisions, such as county commissions) first asks for the planning commission's approval of the public facility's location. If the planning commission disapproves, the commission must communicate its reasons to the governing body, board, or official having jurisdiction over the project. The governing body, board, or official may overrule the planning commission and construct the facility (T.C.A. § 13-4-104).

Subdivision Regulation

Subdivision plats must be submitted to the planning commission by the owner of the property, the holder of a written option or contract to purchase, or the attorney or authorized representative of any of these (T.C.A. § 13-3-402(a), T.C.A. § 13-4-302(a)). "Subdivision" means:

- Dividing a tract or parcel into two or more lots, sites, or other divisions requiring new street or utility construction; or
- Any division of five or fewer acres for sale or building development.

The term "utility construction" does not include the extension of individual service pipes or lines to connect a single site to an existing utility main (T.C.A. § 13-3-401, T.C.A. § 13-4-301).

T.C.A. § 13-4-302 prohibits county registers from recording an amendment, modification, or correction to a subdivision plat without the approval of the planning commission. This statute also provides, however, that an easement or survey attached to an easement granted to the state, a county, a municipality, or metropolitan government, or any of their entities is not an amendment, modification, or correction to the plat.

Except in Davidson, Hamilton, and Knox counties, curbs, gutters or sidewalks may not be required in a subdivision outside the limits of a municipality in an area governed by a regional planning commission unless public water and sewage systems are available within 18 months after a subdivider requests plan approval (T.C.A. § 13-7-301).

Plats submitted to a regional planning commission may be approved by the commission's secretary if the subdivision has only two lots and meets all subdivision requirements (T.C.A. § 13-3-402).

In an area governed by a regional planning commission, it is a Class C misdemeanor for owners or their agents to sell or transfer land by reference to an unapproved subdivision or plat. The county attorney or other official designated by the county commission may file an injunction against such a transfer (T.C.A. § 13-3-410).

Gated Communities
The developer or owner of a proposed gated community must obtain a permit from the planning commission and board of zoning appeals, or the municipal governing body if neither of these exists, before installing or replacing a security gate or barrier. The municipal building or codes inspector must inspect the security gate or barrier. Gates and barriers must be equipped with a radio-operated receiver/controller capable of receiving signals from police, fire, utility and emergency medical services radio transceivers serving the facility.

These requirements apply in multifamily residential, commercial, and industrial gated communities and facilities with a gate or barrier to block entrance to the facility or community from a public street. Additionally, these requirements are applicable only where the driveway or access road leading to the gate is 24 feet or more in width (T.C.A. §§ 13-8-101, et seq.).

Zoning

A municipality's "chief legislative body" is empowered to adopt and amend a zoning ordinance. The adoption process requires a public hearing preceded by a newspaper notice of at least 15 days (T.C.A. § 13-7-203).

The zoning ordinance may "regulate the location, height, bulk, number of stories, and size of buildings and other structures; the percentage of the lot that may be occupied; the sizes of yards, courts, and other open spaces; the density of population; and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, and other purposes ..." and establish special districts or zones "subject to seasonal or periodic flooding ... and such regulations may be applied therein as will minimize danger to life and property." Zoning regulations may provide for the transfer of development rights under procedures and restrictions set out in T.C.A. § 13-7-201(a)(2).

The municipal planning commission is responsible for certifying to the governing body a zoning plan, the text of a zoning ordinance, and zoning maps. Any change in the ordinance, including the zoning map, must be referred to the planning commission for approval. The planning commission's disapproval may be overridden by a majority vote of the entire legislative body. The same procedure applies to any zoning ordinance amendment (T.C.A. §§ 13-7-201–204).

The "chief legislative body" may provide for a board of zoning appeals of three to five members or designate the municipal planning commission to act in this capacity. The board is authorized to grant exceptions that are "in harmony with [the] general purpose and intent" of the zoning ordinance and "to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions as they arise in the administration of the zoning regulations." In addition to those taken by aggrieved persons, appeals may be taken to the board of zoning appeals by an affected "officer, department, board, or bureau of the municipality" (T.C.A. §§ 13-7-201, *et seq.*).

These general law provisions supplement, but do not supplant or modify, any private acts for a particular city. General law provisions regarding zoning powers and procedures apply to the extent that they are not in conflict with such private acts. The most restrictive regulations control any conflict with respect to width or size of yards, courts, or other open spaces; height and number of stories or buildings; and density (T.C.A. § 13-7-209).

Under T.C.A. § 68-221-416, advanced treatment systems for the treatment and disposal of sewage under a pilot project study conducted by the state are subject to zoning requirements established by the municipality for the parcel of property.

Condominium Ownership
A zoning or land use ordinance may not prohibit the condominium form of ownership or impose any requirement on a condominium it “would” not impose on an identical development under a different form of ownership (T.C.A. § 66-27-206).

Zoning and Subdivision Regulation Outside City Limits
If a municipal planning commission has been designated as a regional planning commission, the city may exercise zoning powers beyond its boundaries up to and including its growth boundary if the county is not exercising such zoning power. The state code specifies procedural requirements for public hearings and notice to the county of its intent to exercise zoning authority outside its corporate limits. City zoning is nullified when the county exercises its zoning powers (T.C.A. §§ 13-7-302–306).

Several sections of Public Acts 1998, Chapter 1101, affect municipal zoning and subdivision authority outside municipal limits. Two of them amend T.C.A. § 13-3-102 and T.C.A. § 13-3-401(2), which are part of the statute that governs the authority of regional planning commissions. Read together, they appear to limit the jurisdiction of regional planning commissions outside municipal limits to the territory within the urban growth boundary (when one has been established by adoption of the growth plan). Another is codified in T.C.A. § 6-58-106(d), and provides that

> Notwithstanding the extraterritorial planning jurisdiction authorized for municipal planning commissions designated as regional planning commissions in Title 13, Chapter 3, nothing in this chapter shall be construed to authorize municipal planning commission jurisdiction beyond an urban growth boundary; provided, that in a county without county zoning, a municipality may provide extraterritorial zoning and subdivision regulation beyond its corporate limits with the approval of the county legislative body.

Disagreement exists on the effect the last clause in T.C.A. § 6-58-106(d) has on the authority of municipal planning commissions designated as regional planning commissions to adopt zoning and subdivision regulations outside their municipal limits but within the urban growth boundary, absent the approval of the county legislative body.

Limits on Zoning Authority

Group Homes for Handicapped
T.C.A. §§ 13-24-101, *et seq.*, "[take] precedence over any ... ordinance to the contrary" and provide that a home for up to eight mentally retarded, mentally handicapped, or physically handicapped people and two additional people acting as house parents or guardians may be maintained in any area zoned for "single-family residence" use. Such homes "operated on a commercial basis" are excluded.

Factory-constructed Homes
A dwelling may not be excluded from a residential zone solely because it was partially or completely constructed in a manufacturing facility. This provision does not apply to "factory-manufactured mobile homes constructed as single, self-contained units and mounted on a single chassis" and as further defined in T.C.A. § 68-126-202 (T.C.A. § 13-24-201).

Telephone Facilities
T.C.A. §§ 13-24-301–303 provide that

> No municipal, county, or regional planning commission or any municipal or county legislative body shall by ordinance or otherwise exclude the location or relocation of any facility used to provide telephone or telegraph services to the public. ... Such facilities shall include those essential to the provision of telephone and telegraph services, such as central office exchanges and microwave towers, that require a specific location in order to

> provide the most efficient service to the public. ... The exclusion of location from local regulation shall not preclude the exercise of reasonable municipal and county police powers including but not limited to permit requirements, landscaping, off-street parking, or setback lines as an exercise of police powers.

Feedlots, Dairy Farms, and Egg Production Houses
T.C.A. § 44-18-104(c)(4) exempts these enterprises from zoning restrictions or other regulations that take effect after they commenced operations and prior to their being annexed by a city.

Historic Zoning
A county or municipality may create a special historic zoning commission of five to nine members to have jurisdiction over historic sites and buildings. The state code also provides a mechanism for creating a regional historic zoning commission (T.C.A. §§ 13-7-401–409).

As part of their historic zoning regulations, municipalities may enact ordinances that prohibit a property owner from allowing a building within a historic zone to deteriorate to the extent that it suffers "demolition by neglect" (T.C.A. § 13-7-407).

Conservation Easements
Cities may designate and purchase conservation easements over property listed on the National Register of Historic Places or the Tennessee Register (T.C.A. § 66-9-305).

Sport Shooting Ranges
The right to operate a sport shooting range may not be terminated or restricted because of changing use of adjacent or surrounding properties when the range was issued permission to operate by an entity having zoning authority (T.C.A. § 39-17-316).

Continuation of Nonconforming Business Uses
T.C.A. § 13-7-208(b)-(d) allows the continuation, expansion, and reconstruction of business, commercial, and industrial establishments that existed legally before a zoning enactment made them nonconforming. This grandfathering protection for these uses ends if the establishment ceases operation for 30 continuous months. The burden is on the municipality to show that the property owner intentionally and voluntarily abandoned the nonconforming use.

Any structure rebuilt on the site of the nonconforming use must conform to existing zoning requirements for setbacks, height, bulk, and physical location of a structure.

This statute also places limits on the expansion of nonconforming off-site signs. An off-site sign, however, does not preclude any new or additional conforming use on the property on which the sign is located or on adjacent property under the same ownership.

Provisions in the statute establishing the 30-month abandonment period that ends grandfathering protection, that require rebuilt structures to conform to existing zoning restrictions, and that limit expansion of off-site signs do not apply to home rule cities, but they may opt into them.

Wireless Cell Towers
State law recognizes the ability of municipalities that have adopted planning and zoning regulations to regulate the siting of wireless cell towers, but prohibits: (1) regulating the placement of an antenna or related equipment on an existing tower unless this would require an extension that would require lighting or exceed the municipality’s height limitation, (2) considering a co-location an expansion and imposing additional costs or operating restrictions in a co-location unless the tower is owned by the municipality, or (3) requiring an applicant to provide any justification for radio frequency need (T.C.A. §§ 13-24-304, 305).

Chapter Twenty-Three

Countywide Growth Plan, Annexation and Boundary Adjustments, and Dissolution

Annexation, deannexation, growth planning, and dissolution are governed by a vast and intricate web of statutory and case law that is too extensive to be covered in this Handbook. For information on these topics, see the MTAS publication *Annexation Handbook* by Sid Hemsley.

Chapter Twenty-Four

Airports

State Assistance

State Technical Assistance
Engineering and other technical assistance is available from the state Department of Transportation to any city or group of cities requesting help with planning, acquiring, constructing, improving, maintaining, or operating airports (T.C.A. § 42-2-203(a)).

State Funding Assistance
The department may give loans, grants, or both to any city or group of cities. Such funds are for planning, acquiring, constructing, improving, maintaining, or operating an airport that is owned or controlled by a city or group of cities (T.C.A. § 42-2-203(b)).

The department also is authorized to act as agent for a city or group of cities to obtain and disburse federal money and other public and private funds to finance municipal airports. It must act as a municipality's agent for certain federal funds, but this is optional if the municipality's airport has a minimum of 25,000 originating takeoffs annually. At the request of a city or group of cities, the department also may act as agent in contracting and supervising airport construction, improvements, maintenance, or elimination of hazards, regardless of the size of the facility (T.C.A. § 42-2-203(c), T.C.A. § 42-2-223, T.C.A. § 42-5-119).

Governing of Airports

Airport Officer or Board
Authority for planning, constructing, and operating an airport may be transferred by resolution of a city's governing body to an airport officer or board. However, the facility remains the city's responsibility (T.C.A. § 42-5-112).

Joint Operations
One city may help another city or group of cities develop or operate an airport through a gift of land or personal property, or by a lease or loan with or without interest (T.C.A. § 42-5-121). Any two or more public agencies (including cities) may agree to jointly develop and operate an airport facility. An ordinance or resolution should specify the agreement's duration, the proportionate interest each agency has in the airport property, the proportionate cost to be borne by each agency, conditions for terminating the agreement, methods for disposing of jointly owned property, and liability for unpaid indebtedness.

A board may be established with members appointed by the participating public agencies. The board's size and the members' terms and compensation should be prescribed in the joint agreement. The board has the power to develop, operate, and police the airport facilities in the names of the participating agencies. The board's budget is subject to approval by the cooperating governing bodies, and the cooperating governing bodies must give their approval before the board can exceed its budget, dispose of any property, or adopt any policing regulations. Eminent domain proceedings may be instituted only by authority of the cooperating governing bodies (T.C.A. §§ 42-5-201–205).

Airport Authorities
Any city may establish a municipal airport authority by ordinance and appoint between five and 11 commissioners. Before the authority can become operative, it must apply for and be granted a certificate of incorporation by the secretary of state. A regional authority may be created by resolutions passed by two or more cities, provided a public hearing is held in each municipality. Each city and county appoints two members, and the airport commissioners appoint an extra member. If they cannot agree on the additional member, that member is named by the governor.

City participation in the authority may be increased or decreased with consent from the authority commissioners and holders of at least 60 percent of any outstanding bonds. An amended certificate must be obtained from the secretary of state for any change in an authority.

Authority commissioners may receive no compensation for service, but they are entitled to be reimbursed for expenses they incur. An executive director and other technical and supporting personnel may be employed. For legal services, the authority may either use the city's attorney or employ its own counsel.

An airport authority has all the powers that could be exercised by a municipality operating an airport except levying and collecting taxes or special assessments (T.C.A. §§ 42-3-101–119).

T.C.A. §§ 42-4-101, *et seq.*, create and govern metropolitan airport authorities.

Funding of Airport Development and Operation
A municipality is authorized to levy and appropriate taxes or other funds for airport development and operation. If the amount is in excess of any charter limitation, the tax levy must be approved by a majority of the city's voters unless the levy is for retiring bonds.

Airport costs may be partially or fully funded from the proceeds of bonds issued by the city. Any fees, rents, or other revenues pledged as security for bonds and fixed by the terms of a contract or lease may not be revised during the term of the lease or contract except as provided in that document (T.C.A. §§ 42-5-114–115).

Revenues received by the city from operating or selling an airport may be used for any municipal purpose (T.C.A. § 42-5-118).

Airport Construction and Expansion

Authority to Use City Resources
Any city may use public funds to plan, establish, develop, construct, enlarge, improve, equip, operate, regulate, protect, and police airports and air navigation facilities, whether or not they are inside city boundaries. A city may use land it already owns, or a city may acquire land through purchase, gift, lease, or eminent domain. Land also may be acquired for aviation easements or to remove or protect against airport hazards. County approval is required before a city may acquire property outside its corporate limits by eminent domain for an airport (T.C.A. § 42-5-103).

A city also may acquire existing airport or air navigation facilities by any of the above means. However, if the facility is owned or controlled by the state or other public agency, it may not be taken over without that agency's consent (T.C.A. § 42-5-104).

The city may not be prevented from going onto the land in question to conduct surveys and other examinations relating to the proceedings. It may take possession of the land any time after initiating proceedings and may abandon such proceedings any time before a final decree is entered (T.C.A. § 42-5-108).

Annexation of Airport Property
If three or more municipalities and counties jointly create a regional airport commission and the regional airport property is not located within a municipality's boundary, no municipality may annex any regional airport property without the prior consent of the legislative bodies of the participating municipalities and counties (T.C.A. § 6-51-117).

The property of an airport with regularly scheduled commercial passenger service that is in a county rather than in the creating municipality is an annexation-free zone unless the annexation is approved by the governing body of the creating municipality (T.C.A. § 6-58-116).

Construction Over Public Waters or Submerged Lands
Municipal airports may be established on any public waters, submerged lands, or reclaimed lands within or bordering the city's territorial limits (T.C.A. § 42-5-105).

Airport Zoning Regulations

Cities must prevent and eliminate airport hazards (structures, trees, and land uses obstructing air space) because they endanger both public safety and the public's investment in airports. In exercising this authority, a city must adopt and enforce zoning regulations for airport hazard areas within city boundaries.

If a city cannot eliminate existing hazards under its police powers, it may do so "by purchase, grant, or condemnation" of real property (T.C.A. §§ 42-6-112–113).

When municipally owned airports are outside city boundaries, the city and the county may develop joint regulations, or the county may, by resolution, authorize the city to adopt regulations. If the city feels county regulations are not adequately enforced, or if the county fails to adopt regulations, the city may adopt and enforce airport zoning regulations with state approval. If county and city regulations conflict, those approved by the city will be in effect (T.C.A. § 42-6-103).

Airport zoning plans must be certified by the state Department of Transportation and by the city or regional planning commission before they become effective (T.C.A. § 42-6-105).

The procedure for adopting airport zoning regulations is much the same as for other zoning regulations. A public hearing must be conducted before an ordinance is enacted or amended. Notice of the time and place of the hearing must be published in a general circulation newspaper at least 15 days before the hearing. An ordinance may not be amended without approval of the agencies originally certifying the ordinance. If the ordinance amendment is disapproved by those agencies, it still may be adopted by a favorable vote of a majority of the entire membership of the city council (T.C.A. §§ 42-6-105–107).

A board of zoning appeals shall be established by the city council, which determines the method of appointing the three or five members and fixes their terms and compensation. If the city already has a board of zoning appeals, it may be designated to hear appeals of airport zoning regulations under the terms and conditions contained in T.C.A. §§ 42-6-108–109.

Permits for Structures Near Airports
Local zoning regulations generally control erecting structures near airports. However, state permits are required when local zoning has not been adopted to protect airspace around airports from tall structures and under certain other conditions (T.C.A. § 42-2-227).

Operation and Use Agreements

Provided the public interest is protected, a city may enter into contracts, leases, agreements, grants, or other arrangements for use of all or part of its airport by a person or persons for a term not to exceed 50 years unless other limitations are included in any loan or grant agreements. If the city operates the facility, the city establishes the terms and conditions of any agreements and fixes uniform charges, fees, or rentals for the privileges, services, or uses of the buildings (T.C.A. § 42-5-110(a)).

A city may contract with one or more persons to operate the airport as an agent for the city for a period not to exceed 50 years (T.C.A. § 42-5-110(b)).

The city may put liens on personal property to force payment for any charges, repairs or improvements the city makes on it (T.C.A. § 42-5-111).

Miscellaneous Provisions

Restrictions on Charges for Use of Airports
A city or airport authority may not require payment of a license fee, tax, or other charge for any public use (landing or taking off) of an airport by planes weighing up to 12,500 pounds unless the aircraft is used by "regularly scheduled aeronautics." However, a charge may be made for storing aircraft overnight, and a tax or fee may be collected for selling aviation fuel. Metropolitan airport authorities are exempted from this law, and the Department of Transportation may exempt others "for good cause shown" (T.C.A. § 42-2-107).

Disposing of Airport Property
Unless there are specific limitations included in grant or loan agreements, a city must sell or lease an airport or any portion of it in accordance with state laws or the city charter. If the facility is transferred to another governmental unit, however, disposal is on terms that are in the city’s best interests (T.C.A. § 42-5-109).

Regulations
When a city acquires or establishes an airport, the local governing body may adopt ordinances and regulations to manage the facility and establish penalties for violations whether or not the airport is within the city's boundaries. The city also may appoint airport guards with full police powers to enforce its regulations. The airport is under the full control of the owner-city, but regulations adopted by the city must conform to state and federal laws and standards. An airport outside a city in Davidson, Shelby, Hamilton, and Sullivan counties is not subject to taxation by the jurisdiction in which it is located (T.C.A. § 42-5-113).

Civil Air Patrol
Civil Air Patrol activities are in the public interest, and cities may appropriate funds for them (T.C.A. § 42-7-101).

Audits
Any city receiving state funds for its aviation program must allow the state Department of Transportation to audit municipal books to assure the money is being used properly. Refusal to permit such an audit or misuse of aviation program funds may result in withholding of state funds (T.C.A. § 42-2-222).

Chapter Twenty-Five

Education[21]

The Tennessee Constitution, Article 1, Section 8, and Article 11, Sections 8 and 12, require the General Assembly to maintain and support a system of free public schools that provides equal educational opportunity for all children. (Also see *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn 1993); also 2002 WL 31247076 (October 8, 2002)). Each county is required, and some municipalities are permitted, to operate a school system (T.C.A. § 49-2-102, T.C.A. § 49-2-401).

Municipal Operation

A number of municipalities operate school systems under either their charters or general laws. In both cases, they are subject to considerable state regulation (T.C.A., Title 49, Chapters 1-6, 10). T.C.A. § 6-58-112(b) prohibits the establishment of new municipal school systems after May 19, 1998. Cities operating public schools under their charters and levying an additional elementary school tax for operating expenses (other than for grounds, buildings, and equipment) are empowered to continue those operations under their charters, provided there is no transfer of children between city and county schools except by agreement between the respective boards of education (T.C.A. § 49-2-404).

Municipalities that have school systems may, by referendum, levy a municipal school tax above the county school tax. City schools also are entitled to their proportionate share of state funds and county school taxes on the basis of average daily attendance. (T.C.A. § 49-2-103, T.C.A. § 49-2-403).

Contractual Operation of Municipal Schools

Municipalities are authorized to enter into two kinds of contracts for the operation of municipal schools:

1. A city school board and a county school board may enter into a contract for the county superintendent of education to supervise the operation of city schools. Such a contract does not alter the distribution of county and state funds to city schools, but the city is authorized to devote its school funds to payment of the proportionate cost of the maintenance of such schools. The indebtedness of the city school system remains the obligation of the city (T.C.A. § 49-2-1001).
2. The boards of education of two or more school systems are authorized to enter into a contract to establish, maintain and operate a public school or schools jointly. If the city does not have a school board, the city's governing body may enter into the contract (T.C.A. §§ 49-2-1101, *et seq.*).

Consolidation of School Systems

There are five methods of consolidating city and county school operations in Tennessee (not counting the two contractual methods of operating municipal schools outlined above):

1. City-county consolidation (T.C.A. §§ 7-1-101, *et seq.*, particularly T.C.A. § 7-1-108(18), and perhaps T.C.A. §§ 7-21-101, *et seq.*);
2. Transfer by referendum of a city school system to the county (T.C.A. § 49-2-1002);
3. Formation of a unification educational planning commission. This method involves an elaborate study of, and plans for, consolidation. The plan is subject to approval by the state Department of Education and the electorate in a referendum (T.C.A. § 49-2-1201);
4. The municipal school system ceases operation, forcing the county to assume operation of the system (T.C.A. § 49-2-1002); and
5. Multicounty consolidation, a method similar to T.C.A. § 49-2-1201 (T.C.A. § 49-2-1251).

[21]For more information about policies, guidelines, and standards for school systems, go to the Web site of the state Board of Education, www.tennessee.gov/sbe/.

Distribution of Funds

Generally, a city school system is entitled to a *pro rata* share of funds from the issue of county school bonds (including capital outlay notes) financed by a countywide tax levy, based on average daily attendance in county and city schools. That is true whether the bonds are issued under T.C.A. §§ 49-3-1001, *et seq.*, or T.C.A. §§ 9-21-101, *et seq.* Cities are authorized to waive their right to a share of these funds (T.C.A. § 49-3-1003, T.C.A. § 9-21-109). However, if the county school project is financed by the county through a loan from the Tennessee State School Bond Authority for "qualified zone academy projects" under T.C.A. §§ 49-3-1201, *et seq.*, the county is not required to share the proceeds of the loan with the city school system. A "qualified zone academy project" means "buildings, structures, improvements and equipment for schools of any local government" (T.C.A. § 49-3-1202(8) and T.C.A. § 49-3-1206(d)(2)).

T.C.A. § 12-10-115(c) requires counties receiving proceeds from a lease, loan agreement, sales contract, or operating contract with a public building authority for school capital outlay purposes to share those proceeds with city school systems in the county just as capital outlay note proceeds are shared. Proceeds need not be shared by the county until they are received. The requirements of T.C.A. § 12-10-115(c) do not apply in Shelby County.

Chapter Twenty-Six

County Functions Related to Cities

Intergovernmental Agreements

There is broad authority in the statutes for cities and counties to jointly exercise powers and for contractual agreements between the two.

Any powers, privileges, or authority of a public agency in Tennessee may be exercised and enjoyed jointly with any other public agency of Tennessee, of any other state, or of the United States, providing (in the case of cities and counties) that this authority "shall apply only to such powers, privileges, or authority vested in their governing bodies" (T.C.A. § 12-9-104).

Agencies of political subdivisions that have governing boards separate from the governing body (such as municipal utility boards) may enter into interlocal agreements for joint or cooperative action with other similar agencies and other public agencies. Governing bodies of political subdivisions must approve agreements made by their agencies before they take effect (T.C.A. § 12-9-104(a)).

Governing bodies likewise may enter into contracts "with any one or more public agencies to perform any governmental service, activity, or undertaking that each public agency entering into the contract is authorized by law to perform" (T.C.A. § 12-9-108).

Urban-type Public Facilities and Functions

Counties are authorized to construct and operate "urban-type public facilities." This term means

> …sanitary and storm sewer lines and facilities, plants for the collection, treatment, and disposal of sewage and waste matter, facilities and plants for the incineration or other disposal of garbage, trash, ashes, and other waste matter, and/or water supply and distribution lines, facilities, and plants, chemical pipelines and docks, and fire protection and emergency medical services" (T.C.A. § 5-16-101).

Counties may operate these facilities directly through a county department, or they may create a board of public utilities (T.C.A. §§ 5-16-102–103). Cooperative undertakings with other governmental units, including "municipalities, towns, utility districts, and improvement districts within the county" are specifically authorized when "mutually advantageous" (T.C.A. § 5-16-107).

All project plans must be submitted to a regional planning commission or, in the absence of such a commission, the planning commission of the largest city in the county. If neither exists, plans must be submitted to the State Planning Commission. The planning commission receives the plans "for study and a written report" within 90 days or an extended period fixed by the county governing body (T.C.A. § 5-16-112).

Following the planning commission review, if a facility is to be located within five miles of any part of a city’s boundary, a resolution petitioning the city to provide the facility, together with a full report of the county’s plans (engineering and financial feasibility reports, etc.), must be presented to the city. The county may proceed if the city fails "to take appropriate action to provide a specified public facility or facilities in a specified area or areas" within 90 days (T.C.A. § 5-16-111).

Provision is made for transferring to a city rights, duties, property, assets, or liabilities in conjunction with such facilities in the event of annexation, including arbitration for disagreements. The statutory language is the same as that in T.C.A. § 6-51-111 (T.C.A. § 5-16-110). (See Chapter 16, "Utilities.")

Fire Protection

The governing body of any county (except a county under metropolitan government) is empowered to create a "countywide fire department" to be headed by a county fire chief appointed by and serving at the pleasure of such body. Fire tax districts may be established by the governing body and an annual fire tax

levied in each district to pay its proportionate share of the department's yearly expenses. In this case, city residents may not be taxed unless they receive fire protection services from the countywide department. Alternatively, the county governing body may allocate other revenue from the general fund to provide fire protection to unincorporated areas of the county.

In addition to such direct fire protection services, a county using this statute may:

- Contract with cities to provide services outside corporate limits;
- Contract to provide services to cities;
- Provide emergency ambulance, first aid, and rescue services;
- Adopt fire prevention regulations having the force of law;
- Give aid anywhere in the county at fires, floods, or other disasters;
- Assist local and volunteer fire departments, including with financial aid;
- Provide training and maintenance to any fire department; and
- Set up a communications system for all fire and emergency units in the county (T.C.A. §§ 5-17-101, *et seq.*).

Provision is made for transferring to a city rights, duties, property, assets, or liabilities in conjunction with such facilities in the event of annexation, including arbitration for disagreements (T.C.A. § 5-17-102(18)).

Further authority for a county to contract with a city to purchase fire protection service is found in T.C.A. § 6-54-601.

Refuse Collection and Disposal

Counties are authorized to provide refuse collection and disposal on a countywide basis. A county agency may be given this function, or contracts for the service may be made with "any municipality, any utility or other service district, any private organization, or any combination of such entities." Joint action with other counties and municipalities also is authorized.

As with fire protection, districts must be established where refuse collection and disposal service are to be provided. The full costs must be paid from a tax levy within the district or charges levied on service recipients or both. A countywide property tax levy may be used "only if all persons in the county are to be equally served." This is specifically prohibited if any city or special district within the county provides collection and disposal services to its residents (T.C.A. §§ 5-19-101–116).

Under the 1991 Solid Waste Management Act, counties are required to provide residents a collection system that consists, at a minimum, of convenience centers with certified operators and attendants (T.C.A. § 68-211-851). (For further information on the Solid Waste Management Act, see Chapter 14, "Environmental Quality.")

Building Codes

Any county may adopt by reference the "rules and regulations that have been prepared by technical trade associations or model code organizations regulating building construction, plumbing and gas installation, any portion of such rules, or any amendments of such rules" after complying with certain procedural requirements. Such codes are applicable only in a county's unincorporated areas and in cities "which do not elect, now or hereafter, to adopt their own codes regulating the same subject areas" (T.C.A. §§ 5-20-101, *et seq.*).

Zoning

After a county's regional planning commission has submitted a zoning plan, including the text of a zoning ordinance and zoning maps, the county may exercise zoning powers outside municipalities.

The county legislative body also is required to set up a county board of zoning appeals with three or five members to hear appeals and to "make special exceptions to the terms of the zoning regulations in harmony with their general purpose and intent." The position of county building commissioner, with power to issue or withhold building permits, may be established by a county legislative body to enforce its zoning regulations (T.C.A. §§ 13-7-1010–115).

Chapter Twenty-Seven

Tort Liability

Tennessee Governmental Tort Liability Act

In 1973, the Tennessee General Assembly enacted a comprehensive Tennessee Governmental Tort Liability Act (T.C.A. §§ 29-20-101, *et seq.*). The act became effective January 1, 1974, and was made applicable only to claims or actions arising after that date. It applies to any political subdivision of the state, including any municipality or any instrumentality of government created by a municipality.

Definitions

1. "Employee" is "an official, officer, employee or servant, or any member of any board, agency or commission (whether compensated or not) or any officer, employee or servant thereof ..."; and "regular members of voluntary and auxiliary firefighting, police, or emergency assistance programs" (T.C.A. § 29-20-102).
2. "Government employee" is:
    (1) "A regular member of a voluntary or auxiliary firefighting, police, or emergency assistance organization of a governmental entity ...;"
    (2) "Persons who are employed in part-time, seasonal, or probationary positions ... if they receive the same benefits or are subject to the same job protection system and rules as other persons employed by that government in comparable part-time, seasonal, or probationary positions ...;"
    (3) People upon whom has been conferred the status of employee under the Interlocal Cooperation Act (T.C.A. Title 12, Chapter 9) or as otherwise "duly authorized by law" (T.C.A. § 29-20-107).
3. "Governmental entity" means any political subdivision of Tennessee, including, but not limited to, any municipality, metropolitan government, county, utility district, or school district duly created and existing pursuant to the state's constitution and laws; in Shelby County a nonprofit public benefit corporation operating a hospital whose board is appointed by a governmental entity; or any instrumentality of government created by any one or more of the named local governmental entities or by an act of the General Assembly (T.C.A. § 29-20-102).
4. "Injury" means death, injury to a person, damage to or loss of property, or any other injury to a person or estate that would be actionable if inflicted by a private person or his or her agent (T.C.A. § 29-20-102).

Expressly not an employee under the Tennessee Governmental Tort Liability Act is "any person who is not an elected or appointed official or a member of a board, agency or commission ... unless the court specifically finds that all of the following elements exist:

- "The governmental entity itself selected and engaged the person in question to perform services";
- The governmental entity is liable for, and the person receives from the entity's payroll department, all of his or her compensation;
- The person receives the same benefits, including retirement and insurance program eligibility, from the governmental entity;
  The person acts under the control and direction of the governmental entity as to both results and means and details by which the result is accomplished; and
- The person is entitled to the same job protection and grievance rules that apply to other employees.

Determination of Liability

The statute provides that governmental entities are not liable for their torts except as provided in the statute. The act states, "Except as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary. ... When immunity is removed by this chapter, any claim for damages must be brought in strict compliance with the terms of this chapter" (T.C.A. § 29-20-201).

Waiver of Immunity
A governmental entity may waive its immunity from suit only by express provisions or endorsement of a policy or contract of insurance authorized by this law to cover its liabilities. The law also provides that any contract of insurance to cover liabilities under federal law shall not be construed or deemed to be a waiver of such immunity (T.C.A. § 29-20-404).

Situations Where Immunity is Removed
Governmental entities are not immune from suit for injuries resulting from an employee's negligent operation of a motor vehicle or other equipment while in the scope of his or her employment. However, this provision does not repeal T.C.A. § 55-8-101, T.C.A. § 55-8-108, or T.C.A. § 55-8-132, which relate to operating authorized emergency vehicles. The immunities provided by these sections are expressly continued (T.C.A. § 29-20-202).

Governmental entities are not immune from suit for any injury caused by a defective, unsafe, or dangerous condition of any street, alley, sidewalk, or highway owned and controlled by the governmental entity, including any traffic-control devices. This provision does not apply unless constructive or actual notice to the governmental entity of the condition is alleged and proved (T.C.A. § 29-20-203).

Governmental entities are not immune from suit for any injury caused by the dangerous or defective condition of any public building, structure, dam, reservoir, or other public improvement owned and controlled by the governmental entity. Immunity is not removed for latent defective conditions, nor shall this section apply unless constructive or actual notice to the governmental entity of the condition is alleged and proved (T.C.A. § 29-20-204).

Governmental entities may be sued for injury proximately caused by a negligent act or omission of an employee within the scope of his or her employment, unless the injury arises or results from:

- Riots, unlawful assemblies, public demonstrations, mob violence, or civil disturbances;
- Assessing, levying, or collecting taxes;
- Exercising or performing or failing to exercise or perform a discretionary function, whether or not the discretion is abused;
- False imprisonment pursuant to a *mittimus* from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interfering with contract rights, inflicting mental anguish, or invading right of privacy or civil rights;
- Issuing, denying, suspending, or revoking or failing or refusing to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;
- Failing to make an inspection or making an inadequate or negligent inspection of any property;
- Instituting or prosecuting any judicial or administrative proceeding, even if malicious or without probable cause;
- Misrepresentation by an employee, whether or not such is negligent or intentional; or
- Y2K-related computer failures occurring before January 1, 2005 (T.C.A. § 29-20-205).

The nine exceptions listed above are categories in which governmental entities may not be sued for the negligent acts of their employees. Except for these listed categories, governmental entities are liable for any injury proximately caused by a negligent act or omission of any employee within the scope of his or her employment.

T.C.A. § 29-20-201 grants immunity from suit to all members of boards, commissions, agencies, authorities, or other governing bodies of governmental entities arising from their affairs except for willful, wanton, or grossly negligent acts.

Procedures Under the Act
The remainder of the act provides the procedures for making claims against governmental entities and for determining liability, limitations on liability, and the means of satisfying claims or judgments. An important provision relates to employee liability.

A governmental entity or employee is given 60 days to answer or otherwise respond to a claim, action, or suit. If the claim is denied, the claimant may institute an action in the circuit court. This action must commence within 12 months after the cause of action arises. A significant provision gives circuit courts exclusive original jurisdiction over any action brought under the act (except in Shelby County where General Sessions Court has concurrent jurisdiction up to jurisdictional limits), and the action is heard and decided without jury intervention, unless a nongovernmental defendant also is sued. In these cases, any party may request a jury.

Suits filed under the act must be brought in the county where the governmental entity is located. A governmental entity operating in more than one county shall be deemed to be located in the county where its principal office is located.

An officer or body appointed by the governing body of any governmental entity may, subject to such regulations and procedures as may be prescribed by the governing body, compromise and settle any action for damages or relief sought under the act. If no such appointment has been made, the chief administrative officer of the governmental entity shall be deemed to have been appointed and to have such power.

Before holding a governmental entity liable for damages, the court must first determine that:

- The employee act(s) was (were) negligent and the proximate cause of the plaintiff's injury;
- The employee(s) acted within the scope of his (their) employment; and
- None of the exceptions is applicable (T.C.A. §§ 29-20-301–313).

Several sections of the act deal with paying claims or judgments against governmental entities. Any claims approved for payment by a governmental entity or any final judgment obtained against a governmental entity shall be paid from funds appropriated or reserved for that purpose. At the governmental entity's discretion, claims may be paid in not more than 10 equal, annual installments commencing the next fiscal year or in such other manner agreed upon by the claimant and governmental entity. Installment payments shall bear interest at 6 percent per annum on the unpaid balance. If the judgment is less than $5,000, a lump sum payment must be made (T.C.A. § 29-20-312).

Protection for Employees

No claim may be brought or judgment entered against an employee for damages for which the governmental entity is liable under the act, except in alleged medical malpractice cases. No claim for medical malpractice may be brought or judgment entered against a health care practitioner for damages unless the amount sought or judgment entered exceeds either the minimum limits set in the act or the insurance coverage actually carried by the governmental entity, whichever is greater, and the governmental entity also is made a party defendant.

No claim may be brought or judgment entered against an employee for injury proximately caused by an act or omission of the employee within the scope of his or her employment for which the governmental entity is immune in amounts exceeding those established for governmental entities (see "Governmental Liability Caps") unless the act or omission was willful, malicious, criminal, for personal financial gain, or medical malpractice committed by a health care practitioner and the claim is brought against the health care practitioner. Only doctors and nurses are considered health care practitioners under the act (T.C.A. § 29-20-310 (b) and (c)).

Local governmental entities may insure any or all employees against all or any part of their liability for injury or damage resulting from a negligent act or omission, or they may indemnify their employees for claims for which the governmental entity is immune upon such terms and conditions as the local government may deem appropriate. Cities also may insure or indemnify volunteers working under the direction of an employee from claims for which the governmental entity is immune. The indemnification amount may not exceed the liability limits established for governmental entities, except for claims for which there is no liability cap (see "Governmental Liability Caps") (T.C.A. § 29-20-310, T.C.A. § 29-20-406).

Governmental Liability Caps

The act caps at specified dollar amounts the liability exposure of local governments for tort claims. Every policy or insurance contract purchased by a governmental entity must provide these minimum coverage amounts. The caps (or minimum coverage amounts) in the chart below apply in each accident.

Governmental vehicles may be considered uninsured motor vehicles. However, the applicable limits of liability for cities for claims arising out of the operation of a government vehicle are equal only to the limits of T.C.A. § 29-20-311 (T.C.A. § 56-7-1201(d), T.C.A. § 56-7-1202(c)).

The law is comprehensive, but it does not affect certain statutes. Any action in eminent domain initiated by a landowner (inverse condemnation) under T.C.A. § 29-16-123 and T.C.A. § 29-16-124 is explicitly exempted from the caps (T.C.A. § 29-20-105). Similarly, the caps do not apply to any action brought by an employee under Tennessee's workers' compensation laws (T.C.A. § 29-20-106).

Date Cause of Action Arose	Liability Cap for Death or Injury to One Person	Liability Cap for Death or Injury to All Persons	Liability Cap for Property Damage
On or after July 1, 1987, but before July 1, 2002	$130,000	$350,000	$50,000 (*applies to causes of action arising on or after July 1, 1992*)
On or after July 1, 2002, but before July 1, 2007	$250,000	$600,000	$85,000
On or after July 1, 2007	$300,000	$700,000	$100,000

Joint Reserve Funds Allowed: TML Risk Management Pool
The Tennessee Municipal League (TML) has established a liability insurance pool to serve member cities with low-cost, reliable liability coverage. Detailed information about the pool is available from TML.

Any governmental entity is entitled to create and maintain a reserve or special fund or, with one or more other local governmental entities, contribute to a joint reserve or special fund to pay claims against the cooperating governmental entities pursuant to the act, or to purchase liability insurance to protect the cooperating governmental entities from any or all risks created by the act (T.C.A. § 29-20-401).

Recreation Liability
See the liability section in Chapter 20, "Parks and Recreation."

Community Service: Criminal and Juvenile Offenders
A municipality, its officers, and its employees will not be liable to the offender, his or her family, or other persons for acts of a state criminal law offender or a municipal ordinance offender performing public service work if the municipality exercised due care in supervising the offender (T.C.A. § 41-3-107).

If a municipality or other organization exercised due care in supervising a juvenile performing community service work, immunity is granted to such entities for:
- Any injuries sustained by the juvenile;
- Injuries to others caused by the juvenile;
- Any act of the juvenile; and
- Liability for the juvenile or his or her family for death or injuries caused by the juvenile (T.C.A. § 37-1-131(a)(7)).

Inmates housed in county and municipal workhouses may volunteer to work for the municipality or other governmental entity (T.C.A. § 41-3-106(b)(2)).

Drug Task Force Members
A limited number of drug task force members are volunteer employees of the state for tort liability purposes (T.C.A. § 8-42-101(a)(3)). T.C.A. § 8-7-110 affirms the rights, powers, duties and immunities of these task force officers throughout the judicial district.

Emergency Communications District Boards
Emergency communications district boards organized under T.C.A. § 7-86-105 are expressly declared immune from any claim, complaint or suit that relates to or arises from any conduct of the affairs of the board, except in cases of gross negligence of the board or its members. However, that immunity does not extend to any employee of the district (T.C.A. § 29-20-108).

Mutual Aid
T.C.A. § 29-20-207 allows any party benefitting from a response under a written mutual aid, automatic response, operational agreement, or other intergovernmental agreement to pay the judgment against the provider up to the tort liability limits unless otherwise provided in the agreement.

Chapter Twenty-Eight

Miscellaneous

Abandoned Property

The Uniform Disposition of Unclaimed Property Act of 1978 governs the disposition of unclaimed or abandoned personal property, defined as property in a political subdivision's possession that is unclaimed for one year. The act does not apply to real property and is most commonly used to reclaim utility deposits. The state treasurer is responsible for administering the act. Any holder of abandoned property worth $50 or more is required to keep a record of the owner's name and last known address for 10 years and to attempt to notify the apparent owner if there is an accurate address (T.C.A. §§ 66-29-101, *et seq.*). Cities may request that property in the treasurer's hands that remains unclaimed be returned to the city under procedures outlined in T.C.A. § 66-29-121(c). T.C.A. § 66-29-129(b) sets a civil penalty equal to 10 percent of the value of the property each year it is not delivered to the treasurer. The penalty cannot exceed 25 percent of the value of the property or $50,000, whichever is less. These penalties do not apply to inadvertent omissions of property having a value of less than 10 percent of total reportable property.

Balloon Releases

Cities are specifically included in an act that prohibits releasing more than 25 nonbiodegradable, helium-filled balloons. Several counties are exempted from this act by population (T.C.A. § 68-101-108).

Cemeteries

Cities may act as trustees for cemeteries or burial places inside the city boundaries or within five miles of the city boundaries when so appointed by any person or court of competent jurisdiction (T.C.A. § 46-3-101). A city may bring or join a suit to terminate the use of land as a cemetery and to have the remains of deceased persons removed and buried elsewhere. Authority for taking such action, however, extends only to land within one mile of the city limits and not beyond a county's boundaries or within another municipality (T.C.A. § 46-4-103). With approval by a resolution of the governing body, a cemetery company may purchase up to 200 acres of land within a city for perpetual use (T.C.A. § 46-2-101).

Care of Children

Municipalities "are authorized and empowered to establish, erect, operate, and maintain homes for the care and treatment of dependent and neglected, unruly, and delinquent children, and to purchase services from any agency, public or private, which is authorized by law to receive or provide care and/or services for children" (T.C.A. § 37-2-204).

Breastfeeding in Public

Municipalities may not by ordinance prohibit breastfeeding in public of a child 12 months of age or younger (T.C.A. § 68-58-101).

City Recorder or Clerk Certification

With the exception of certain classes of clerks and recorders (lawyers, certified public accountants, city managers and administrators with a master of arts degree in public administration, and persons who have served as both a city recorder and city judge for at least 25 years), cities with populations of 1,500 or more that employ a municipal clerk or recorder are required to have one person meeting the certification qualifications established by the secretary of state. Certification requires at least 100 hours of education courses. Credit hours are given to those with associate's or bachelor's degrees. Also, certification from the

International Institute of Municipal Clerks satisfies the requirement (T.C.A. § 6-54-120). Municipal clerks or recorders hired after July 1, 1994, are allowed four years to meet the certification qualifications. After attaining certification, a clerk or recorder must attend a minimum of 18 hours of continuing education courses every three years to remain certified.

Conflicts of Interest

Municipal officers and employees are permitted to have an "indirect interest" in contracts with their municipality if the officers or employees publicly acknowledge their interest. An indirect interest is any interest that is not "direct," except it includes a direct interest if the officer is the only supplier of goods or services in a municipality. A "direct interest" is any contract with the official himself or with any business of which the official is the sole proprietor, a partner, or owner of the largest number of outstanding shares held by any individual or corporation. Except as noted, direct interests are absolutely prohibited (T.C.A. § 6-2-402, T.C.A. § 6-20-205, T.C.A. §§ 6-54-107–108, T.C.A. §§ 12-4-101–102).

An elected official or a member-elect of a governing body may not knowingly receive a fee, commission, or any other form of compensation, except for that paid by the municipality or a county or the state, to advise or assist in influencing municipal legislative or administrative action. A violation of this prohibition is a Class C felony if it constitutes bribery and a Class A misdemeanor otherwise. An official who is convicted of either will be barred from ever holding office in Tennessee (T.C.A. § 2-10-124).

Gardening

Cities may participate in community gardening programs administered by the Department of Agriculture through county extension agents. The city's primary role is to provide suitable vacant land (T.C.A. §§ 43-24-101, *et seq.*).

Housing

Extensive and detailed laws relating to housing authorities, urban renewal, etc., are codified in T.C.A. Title 13, Chapters 20–23. These laws are not summarized in this publication.

The Tennessee Housing Development Agency (THDA) was created in 1973 and empowered to issue bonds and otherwise raise capital for housing projects
(T.C.A. §§ 13-23-101, *et seq.*). The state realty transfer tax and mortgage tax were increased in 1988 for THDA grants to cities and other eligible political subdivisions to construct and rehabilitate housing for low- and moderate-income families.

Grants for Residential Property in Older Neighborhoods
A municipality may by a resolution passed by a two-thirds vote of its governing body establish a grant program for improvements to residential property constructed 50 or more years before April 22, 2004 (T.C.A. §§ 13-5-101, *et seq.*).

Libraries

Cities and counties have general authority to maintain public library systems and levy taxes for them. Joint action by cities and counties also is authorized. If a tax levy is countywide, it must be shared on a population basis with any city library system supported by city taxes (T.C.A. §§ 10-3-101, *et seq.*). A city may participate in and make appropriations to a regional library system (T.C.A. §§ 10-5-101–107). The state Library and Archives Management Board may enter into a contract for state/local matching funds to finance local library positions subject to approval by the local legislative body that appropriates library funds (T.C.A. § 10-1-104).

Solemnization of Marriages by Mayors

Mayors may perform marriage ceremonies in all Tennessee counties and retain any related gratuities (T.C.A. § 36-3-301).

Medical Assistance

Political subdivisions may appropriate funds directly to the Department of Health to provide medical services to recipients of public assistance or supplemental security income or to needy persons in similar circumstances (T.C.A. § 71-5-131).

National Defense

Municipalities may appropriate funds and lease, lend, sell, or donate real or personal property to the state and federal governments "for purposes of local, state, and national defense and for the use of the National Guard" (T.C.A. § 58-1-510).

Port Authorities

A municipality or any two or more municipalities acting jointly may establish a port authority (T.C.A. §§ 7-87-101, *et seq.*).

Relocation Assistance

When a city construction project is undertaken with federal or state financial assistance and it requires residents to be moved from their homes or businesses to be moved from their locations, the city must follow the procedural and payment rules of the Uniform Relocation Assistance Act (T.C.A. §§ 13-11-101, *et seq.*).

Safety Councils

Cities may make appropriations to safety councils approved by the Tennessee Safety Council (T.C.A. § 7-51-501).

Unemployment Grants

The Local Economic Adjustment Act of 1975 broadly delegates power to cities, counties, and development districts to accept grants and loans from the federal and state governments and to act jointly in "activities designed to alleviate or moderate existing or potential conditions of severe economic adjustment resulting from termination or closure of major industries or firms, unemployment caused therefrom, and other hardships ... and other conditions ..." (T.C.A. §§ 9-14-101–108).

Watershed Development Authority

Contributions from general funds may be made to a watershed development authority if all or a portion of it is located in the county in which the city is located, but no special tax may be levied (T.C.A. § 6-56-108).

Flag Protocol

A state statute requires this placement, top to bottom, of flags flown on the same pole: U.S. flag, state flag, other flags (T.C.A. § 4-1-405).

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