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Municipal Handbook 2003

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Chapter 15: Health and Sanitation

Health Departments

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.

Hospitals

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).

Mental Health and Mental Retardation Programs

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).

AIDS

People convicted of rape must be tested for HIV (human immunodeficiency virus), and their victims must be notified of the results (*T.C.A.* 39-13-521).

A person who engages in prostitution knowing that he or she is HIV-positive is guilty of a Class C felony (*T.C.A.* 39-13-516).

Animal (Rabies) Control; Animal Euthanasia

State law directs the Department of Environment and Conservation to administer an anti-rabies program except in counties and cities that have such programs conforming to the law's provisions. Local health agencies and county officers assist in administering the program (*T.C.A.* 68-8-101 et seq.).

T.C.A. 44-17-301–303 governs the manner of destroying non-livestock 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. *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.

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 non-manufacturing 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."

Chapter 16: 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);
   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 and/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:
   1. The city's governing body sets fees and charges for the utility system, which must be sufficient to support the system.
   2. A municipality that owns a gas system may transfer jurisdiction over the system to the board.
   3. 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 and/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.

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/or 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).

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 recordkeeping 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."

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, or private easements, 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.).

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 of the state Department of Environment and Conservation. Board members, appointed by the governor, hear cases referred to them 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).

Depreciation of Grant Fund Assets

T.C.A. 68-221-1010(a) provides that a small water or wastewater system (fewer than 900 customers) that has retained earnings or an operating deficit that would trigger the jurisdiction of the Water and Wastewater Board does not have to include the depreciation on assets acquired with state or federal grant funds. This provision is void if it would jeopardize receipt of funds under the Clean Water Act.

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 and/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).

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).

Pre-treatment Programs
Federal EPA regulations require municipal sewage treatment plant operators to establish programs requiring businesses and industries discharging into the city sewers to pre-treat their effluent to meet the sewer plant's treatment standards. The state code gives cities authority to administer pre-treatment programs and assess civil penalties of up to $10,000 per day for violations (*T.C.A.* 69-3-101 et seq.).

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)).

Additional Provisions for Electric, Gas, and Other Fuel Systems

Energy Production

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.).

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 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 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).

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).

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).

Franchises

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 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 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, and Internet services. 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 comp-troller'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 7, "Municipal Revenues.")

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, 1996, 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.)

Chapter 17: Public Safety

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).

911 Emergency Communications District

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 may also 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 districts:

- 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 who receive 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 $3 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 (*T.C.A.* 58-2-202).

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 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 non-city 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).

The Local Government Emergency Assistance Act of 1987, now codified as *T.C.A.* 58-2-111(c), authorizes municipalities to assist other governmental entities in certain emergencies when the requesting and responding parties do not have a mutual aid agreement.

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.

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 3 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.).

Firefighters 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; 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.

Generally, 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 a pay supplement of up to 5 percent of their annual salaries. *T.C.A.* 4-24-202(c) requires that firefighters serving in the military receive their pay supplements if the military service prevented them from attending in-service training.

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 also may require those systems to conform to applicable building codes and requirements (*T.C.A.* 62-32-201 et seq.)

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).

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).

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 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

Subject to annual state appropriations, officers who complete acceptable recruit training and at least 40 hours of annual training shall receive a salary supplement of 5 percent of their annual salaries but not more than $600. This shall 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 must receive their pay supplements if the military service prevented them from attending in-service training.

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 in 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.

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 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 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.).

Miscellaneous Provisions

Sexual Offender Registration

Certain sexual offenders are required to register and are subject to monitoring (*T.C.A.* 40-39-101 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 must also 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).

Emergency Vehicle Lights
All vehicles except law enforcement vehicles are prohibited from having flashing blue 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).

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 Breathalyzers under state contracts. Use of the instrument is to be reported to the court clerk. The clerk shall include a Breathalyzer 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

Law enforcement agencies are required to make two full sets 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.) The two sets of prints must be sent to the TBI, which keeps one set and sends the other to the FBI (*T.C.A.* 8-3-122, *T.C.A.* 8-8-201(35)). 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).

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).

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.

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 and/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 and/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 gives the governor broad powers to respond to such emergencies, authorizes the governor to create the Tennessee Emergency Management Agency (TEMA), and 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. The TEMP must include the relationship between the state and local governments, which includes:

- Guidelines and schedules for exercises that evaluate the ability of the state and its political subdivisions to respond to minor, major, and catastrophic disasters. Generally, the formation of local emergency management plans is a county function. Municipalities are "authorized and encouraged to create municipal emergency management programs." However, municipal emergency management programs must coordinate their activities to be consistent with the county emergency management plan and must comply with all standards, requirements, and

regulations that apply to such county programs. Municipal requests for emergency response assistance must also be coordinated with the county;
- Determination of the requirements of the state and its political subdivisions for equipment and supplies of all kinds in the event of an emergency, and planning for their acquisition;
- Distribution of catalogs of federal, state, and private assistance programs to appropriate local government officials;
- Coordination of federal, state and local emergency activities, including partial or full mobilizations of emergency equipment and forces; and
- Implementation of training programs to improve the ability of state and local governments to prepare and implement emergency management plans and programs.

The governor, TEMA, and the governing bodies of the political subdivisions of the state establishing local emergency management agencies are directed to use the services, equipment, supplies and facilities of existing departments, offices, and agencies of the state or its political subdivisions to the maximum extent practicable. The officers of such entities are also directed to cooperate with and extend such services and facilities to the governor or to TEMA, and to the local emergency management agencies of the state upon request.

When there is an emergency beyond local control, the governor has the authority to declare a state of emergency or to issue a disaster declaration by executive order or activation of the TEMP. Such a declaration gives the governor broad emergency management powers, including the power to use all resources of the state and each of its subdivisions, including their personnel and other resources, and to give orders to state and local law enforcement agencies as may be reasonable and necessary. These political subdivisions and personnel are required to cooperate with the governor.

TEMA is authorized to provide support forces (mobile reserve) within and without the state. Such support forces, or mobile reserve, consist of personnel, equipment, and other resources of the state and of its political subdivisions. Employees of the state and of its political subdivisions in the support forces have the same powers, duties, rights, privileges, and immunities, and receive the same compensation that they receive in their respective positions. Their compensation is paid by the state or by its political subdivisions, whichever is applicable. Personnel in the support forces who are not employees of the state or of its political subdivisions are entitled to similar rights, privileges and immunities and to compensation fixed by TEMA. All personnel in the support forces are subject to the operational control of the authority in charge of emergency management activities in the areas in which they are serving. They also are entitled to reimbursement for all actual and necessary travel and subsistence expenses to "the extent of the funds available." It is not clear from what source those funds would come.

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 in the event of an emergency affecting only one political subdivision. 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. 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.

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.

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).

Terrorism

T.C.A. 68-56-104 creates a Public Health Emergency Advisory Committee to develop a statewide plan to counter bioterrorism. *T.C.A.* 68-56-107 creates a Hospital Bio-preparedness Planning Committee to develop and implement regional hospital plans to handle bioterrorism and other emergencies. Municipal representatives serve on both these committees. There also are several crimes related to terrorism and enhanced punishment when terrorism is involved in crimes generally not considered terrorist in nature. See *T.C.A.* Titles 39 and 40. See also "Price Gouging During States of Emergency" in the chapter on business regulation.

Chapter 18: Streets and Other Public Ways

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 and/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).

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.).

Street Construction

Ramps for the Handicapped

State 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).

Federal Requirements

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 such streets 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. (See *Eminent Domain in Tennessee: An Attorney's Guide* by James Murphy, The University of Tennessee Municipal Technical Advisory Service, 1992.)

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 Provisions

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).

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

Littering public or private property is a Class B misdemeanor. Courts are authorized to require a convicted litterer to clean up what he or she dropped and spend up to 11 months, 29 days removing litter from state highways or other appropriate public locations (*T.C.A.* 39-14-502).

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).

Limitation on Hot Mix Asphalt Production

Most counties and cities are prohibited from owning or operating a hot mix asphalt plant or facility. However, if a facility was in existence in 1976, production may be continued, replaced, expanded, or altered. The product of any such plant or facility may not be sold, traded, bartered, loaned, or given away. The act does not apply in the following counties: Crockett, Davidson, Grundy, Madison, Marion, Overton, and Shelby (*T.C.A.* 12-8-101).

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 19: 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

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.).

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).

Gas Tax for Transit System

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.* 67-3-2101–2112).

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 lack of 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 appropriate provisions of the state Rules of the Road and impose additional regulations not in conflict with them for operating vehicles within a city. 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 shall be refused admittance because he or she cannot pay (*T.C.A.* 55-10-301). 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.* 55-10-307–308).

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 is generally 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 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 Safety Restraints — Motor Vehicles[1]

T.C.A. 55-9-602(a) makes any person transporting a child up to the age of four years responsible for the child being restrained by a child restraint system that meets federal motor vehicle safety standards. A person transporting a child between four and eight years old who weighs less than 40 pounds is responsible for using a separate carrier, child seat, or belt-positioning booster seat.

A violation of this provision of the law is a Class C misdemeanor, and the offender may be required to attend court-approved offender classes on the hazards of not safely transporting children in motor vehicles. *T.C.A.* 55-9-602(g) provides that any person transporting a child between the ages of four and eight who weighs less than 40 pounds and/or any child between eight and 15 in a passenger vehicle shall be responsible for the child properly using a child or other passenger restraint system (including safety belts) that meets federal motor vehicle safety standards. A person charged with a violation of this provision of the law may, in lieu of a court appearance, pay a fine of $20. Apparently clerk's fees, court costs and litigation taxes are prohibited for convictions of either subsection (a) or (g) of this law. 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. 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(g), apparently supercedes *T.C.A.* 55-9-603 with respect to children between the ages of four and 15 years of age. A violation of this statute is a Class C misdemeanor, but offenders may, in lieu of a court appearance, pay a fine of $10 for the first offense and $20 for the second and subsequent offenses. However, if the vehicle operator or passenger is between the ages of 16 and 17, inclusive, the fine in lieu of a court appearance is $20. Clerks' fees, court costs and litigation taxes are also prohibited for convictions under this law.

Railroad Crossings Protection

T.C.A. 55-8-146 provides that municipalities

[1]Chapter No. 299, Public Acts of 2003, made extensive changes to provisions on child safety restraints. Since those provisions do not take effect until July 1, 2004, however, they are not included here.

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. Municipalities have the authority to erect the appropriate speed limit signs and traffic signals (*T.C.A.* 55-8-152, 153, 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:

1. On the state system of roads and highways as it deems appropriate due to conditions affecting the roadway or traffic; and

2. "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.* 55-10-307 authorizes cities to adopt the financial responsibility law by reference. The maximum fine for an ordinance violation is $50.

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).

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.

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 driver 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 Vehicles

Municipalities may prohibit the operation of low speed vehicles on any street in their jurisdiction in the interest of public safety. A "low speed vehicle" is any four-wheeled electric vehicle, except golf carts, whose top speed is 25 mph or less but greater than 20 mph. Low speed vehicles may be operated only on streets with a posted speed limit of 35 mph or slower. Operators must possess a Class D driver's license (*T.C.A.* 55-8-101, 191).

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).

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 by a $100 fine (*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 $100. The signs must also 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 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).

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).

Operation of Motor Vehicles

Following Fire Apparatus

Drivers other than those on official business are prohibited from following within 500 feet behind 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 six 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. 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 (*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).

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 so 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.

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).

Disposal of Abandoned, Immobile or Unattended Motor Vehicles

T.C.A. 55-16-101 et seq. authorize municipalities to "take into custody" and dispose of certain abandoned, immobile or unattended motor vehicles. "Abandoned motor vehicle" means a motor vehicle that meets the conditions below.

"Immobile motor vehicle" means any motor vehicle, trailer, semitrailer, or combination or part of any of the above that is immobilized and incapable of moving under its own power due to an accident, mechanical breakdown, weather conditions, or other emergency condition.

"Unattended motor vehicle" means any motor vehicle, semitrailer, or a combination thereof, that is on public or private property, is unattended by the owner or authorized driver, and interferes with the orderly flow of traffic, or a motor vehicle that is unattended by reason of the arrest of the driver (*T.C.A.* 55-16-103). Three different situations are described.

***Case 1*:** When an abandoned motor vehicle is more than five years old and has no engine or is otherwise totally inoperable, a municipality (if the vehicle is on municipal property) or any person upon whose private property it is found may dispose of it to a demolisher without any notice to the owner, holding any auction, and producing any title (*T.C.A.* 55-16-108(e)).

ABANDONED MOTOR VEHICLE

Location	Vehicle Age	Time Left Unattended	Condition
Public property	More than 4 years old	More than 10 days	N/A
Public property	N/A	More than 3 days	Obvious state of disrepair
Public property	N/A	More than 48 hours	Illegally parked
Private property	N/A	More than 48 hours	Without consent of owner or person in control of property
Garage, trailer park, parking lot, or any type storage*	N/A	More than 30 consecutive days	N/A

**Does not apply to a motor vehicle where its owner is personally known to the owner or operator of the establishment and where the owner had made arrangements for the parking and storage of such vehicle for a period of longer than 30 days.*

Case 2: When a properly licensed motor vehicle is abandoned on a public way but otherwise fits the description of Case 1, then it may be disposed of to a demolisher if no claim is filed within 10 days (*T.C.A.* 55-16-108(f)(1)).

Case 3: If neither of the above cases applies, two detailed procedures are prescribed for taking a vehicle into custody and providing notice to the owner and lienholders.

Post-seizure Notice

Two kinds of notice are required when a motor vehicle is taken into custody before notice is given of its seizure:

1. When any person (including a police officer) takes possession of a vehicle found abandoned, immobile, or unattended, the action shall be reported immediately to the Division of Motor Vehicles for verification of ownership on a form prescribed and provided by the registrar of motor vehicles;
2. A police department that takes the abandoned, immobile, or unattended vehicle into custody shall notify within 15 days by registered mail, return receipt requested, the last known registered owner and all lienholders of the motor vehicle that the vehicle has been taken into custody. The notice shall:
    - Describe the year, make, model, and serial number of the vehicle;
    - Set forth the location of the facility where the motor vehicle is being held;
    - Inform the owner and any lienholders of their right to reclaim the motor vehicle within 10 days after the date of the notice, upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody; and
    - State that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by them of all right, title, and interest in the vehicle and consent to its sale at public auction (*T.C.A.* 55-16-1050).

Any garage keeper or towing firm, which has in its possession an abandoned, immobile, or unattended motor vehicle taken into custody and placed in the legal possession of the garage keeper or towing firm by the police department, shall comply with the same notice requirements.

Pre-seizure Notice

The police department is not required to provide the post-seizure notice to the owner and lienholders of vehicles if it had provided a pre-seizure notice that the vehicle had been found to be abandoned, immobile, or unattended. The pre-seizure notice must:

- Be sent by registered or certified mail, return receipt requested, to the last known address of the owner of record and to all lienholders of record. If the owner or lienholders cannot be located through the exercise of due diligence, notice by publication shall be given in one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned, immobile, or unattended. The notice shall be in a small display ad format, but one advertisement may contain multiple listings of abandoned, immobile, or unattended vehicles.
- Be written in plain language and contain the year, make, model and VIN of the motor vehicle (if ascertainable), the location of the vehicle, and a statement advising that the owner has 10 days to appeal the determination of the police department that the vehicle is abandoned, immobile, or unattended, or to remove the vehicle, or the police department will take it into custody.

- Inform the owner and any lienholders of their right to reclaim the motor vehicle after it is taken into custody but before it is sold or demolished, upon payment of towing, preservation, storage, or any other charges resulting from taking the vehicle into custody, and state that failure to exercise their rights to reclaim the motor vehicle shall be deemed a waiver of all right, title, and interest in the vehicle and consent to its demolition or sale at public auction.
- Set forth the consequences and effect of the failure to reclaim an abandoned, immobile, or unattended motor vehicle.

If the owner or lienholders fail to appeal the determination that the vehicle is abandoned, immobile, or unattended, or if they fail to remove the motor vehicle within the time allowed for appeal, the police department may take the vehicle into custody. If an appeal is made, the motor vehicle shall not be taken into custody while the appeal is pending. Failure to appeal within the allotted time shall, without exception, constitute waiver of the right to appeal (*T.C.A.* 55-16-105)

Employees of public agencies or towing companies who take possession of a vehicle found abandoned, immobile, or unattended shall verify ownership of the vehicle through the Tennessee Information Enforcement System (TIES) and record the ownership information on the towing sheet or form. The agency shall also provide ownership information to any towing company or garage keeper with whom it has a contract. If the response from TIES is "Not on File," the agency shall contact the Department of Safety, Title and Registration Division, which will search the records not contained in TIES for ownership information. If that division locates ownership information, it will notify the appropriate public agency, and that agency shall distribute the information (*T.C.A.* 55-16-105).

An unclaimed, abandoned, immobile, or unattended motor vehicle taken into custody shall be sold at a public auction pursuant to *T.C.A.* 55-16-106. Alternatively, the police department may waive its rights to sell the vehicle in favor of the garage keeper or towing firm in whose possession the vehicle was legally placed by the police department. If it has made repairs to the vehicle, the garage keeper or towing firm may enforce its garage keeper's lien pursuant to *T.C.A.* 66-19-103. If it has not made repairs, it may, after 30 days following the police department's waiver of rights, sell the vehicle at public auction and keep the proceeds of the sale. The purchaser of the motor vehicle takes title to it free and clear of all liens and claims of ownership (*T.C.A.* 55-16-106–107).

Miscellaneous Provisions

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 (*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 either direction while stopped. Special lighting is also 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.

Chapter 20: 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 two part-time summer leaders to develop recreation programs. In the first two years, the community must match up to $25,000 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 made in each grand division. Multigovernment proposals have priority.

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).

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. 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).

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 21: Code Enforcement and Building Inspection

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:

1. *The Standard Building Code*, 1997 edition, published by the Southern Building Code Congress International, Inc.
2. *Fire Prevention Code* (NFPA No. 1–1997), 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 Code*s, 1997 edition.

This rule shall not be construed as adopting any provision of those publications that establishes:

1. 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
2. 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, which certifies in writing to the state fire marshal, that:

1. It has adopted:
   a. The Standard Building Code published by the Southern Building Code Congress or the International Building Code published by the International Code Council; and
   b. Either the Standard Fire Prevention Code published by the Southern Building Code Congress International, Inc., the Fire Prevention Code published by the National Fire Protection Association, or the International Fire Code published by the International Code Council.
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 shall 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 shall apply if:

1. The local government's building construction safety code publications are not current within six 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.

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.

Inspectors

Certification of Building and Fire 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:

- Sixty years old and have been continuously employed as a building inspector for seven years; or
- Fifty 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 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).

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.

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).

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 or other official authorized to issue a search warrant may issue the administrative inspection warrant.

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 non-residency in the municipality or county (*T.C.A.* 62-6-111(i)(2)(c).

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.).

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).

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 code for energy conservation published by the National Conference of States on Building Codes and Standards as the "minimum requirements for effective use of energy in new buildings." Local jurisdictions 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 1976 edition of *An Illustrated Handbook of the Handicapped Section of the North Carolina State Building Code*. (This handbook is available from the state fire marshal.) 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 who do not occupy their lots 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 also may collect these costs in an action for debt filed in a court of competent jurisdiction (*T.C.A.* 6-54-113).

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 by filing a notice of lien with the register of deeds. The costs 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.

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.

Chapter 22: Planning and Zoning

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. All members are to serve without compensation. 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).

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 t he 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 regional plan. Any parts of such a plan approved by a municipal legislative body 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 (*T.C.A.* 13-3-102, *T.C.A.* 4-3-727).

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 afterwards. 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 (*T.C.A.* 13-3-401, *T.C.A.* 13-4-301).

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).

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 of zoning appeals 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).

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 from deteriorating 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).