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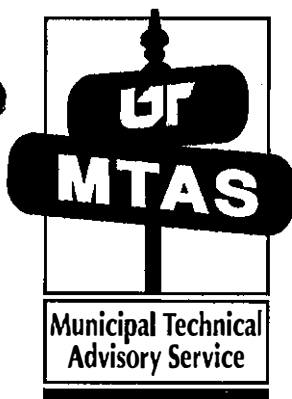
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Bulletin 47

June 21, 1991

Attention General Law Mayor-Aldermanic Municipalities: Your Revised Charter Is Effective July 1

By Leslie Shechter, MTAS Legal Consultant

An improved charter for 52 Tennessee towns and cities is the result of Public Chapter 154, 1991, signed by the governor in April. If your municipality operates under the general law mayor-aldermanic charter, you begin operations under a completely revised version on July 1.

The revisions are the outcome of recommendations from a committee set up by the Tennessee Municipal League to study the old charter. It dated back to the late 1800s, and many considered it difficult to interpret and follow.

The new legislation:

- gives the mayor executive and administrative responsibilities not subject to board approval.
- allows for consistency between the general law mayor-aldermanic and the general law manager-commission charters.
- provides flexibility in the administration of city affairs and authorizes the hiring of a city administrator.
- increases the minimum population required for municipalities incorporating under both the mayor-aldermanic and manager-commission general law charters.
- updates the charter's language and removes provisions otherwise controlled by general Tennessee statutes or declared illegal by federal or state courts;
- adopts specific requirements for ward representation, terms of office, and number of aldermen for municipalities incorporating under the charter after July 1, 1991.

Except for the structure of the board (number of aldermen, ward representation, and terms of office), there is no "grandfathering." All municipalities operating under the general law mayor-aldermanic charter are subject to these new provisions.

What Are The Changes?

The revisions to the charter are most easily discussed section by section.

Chapter 1

Mayor-Aldermanic Charter

6-1-101. Definitions. This section includes a definition of wards and distinguishes between officers and department heads.

6-1-201. Right to Adopt Charter. Here, the minimum population of a territory incorporating under this charter is raised to 500 people. This section gives nearby municipalities an opportunity to block a proposed incorporation by annexing at least 20 percent of the land area proposed for incorporation. The section removes the ability to block a proposed incorporation by annexing 35 percent of the proposed area's population.

This section adds a requirement: the petitioners must notify any municipalities within a specified distance that an incorporation petition has been filed, post written notice of the peti-

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tion in three public places in the territory to be incorporated, and publish notice of the petition in a newspaper for four consecutive weeks.¹

6-1-202. Election to Adopt Charter. This section conforms to the procedures in the manager-commission charter, which require the calling of an election upon the filing of a petition to incorporate. The petition must have the signatures of 33¹/₃ percent of the registered voters in the area to be incorporated.

There's also a requirement that petitioners file, along with the petition, a cash bond for the costs of the election.²

6-1-203. Petition to Incorporate Under this Charter. This section requires a petition to be substantially in the form set out in the sample petition in *Tennessee Code Annotated* §6-1-209. It must:

- delineate municipal and ward boundaries,
- designate the wards with initial two-year terms (if there is only one alderman to be elected per ward),
- include the proposed name for the municipality, and
- relate whether it will be a city or town.

All boundary descriptions must contain references to the tax maps.

6-1-205. Effect of Vote. Here, if the votes for incorporation come up short, a four-year waiting period is required before trying again. However, if another incorporation is proposed that includes less than 50 percent of the territory subject to incorporation in the previous election, there's just a two-year waiting period.

6-1-207. Election of Officers Upon Incorporation. Under the new charter, aldermen may not be elected at the same time as the election to adopt the charter. However, the election of officers must be within 62 days after the charter election.

If wards are represented by more than one alderman, those receiving the most votes serve a four-year term. Those with a lower number of votes serve an initial two-year term. This section provides that the mayor and aldermen "hold over" until successors are elected and qualified.

6-1-208. Succession to Old Corporation. This is a transition section for municipalities changing to the mayor-

aldermanic charter. Also, it says that a territory's existing zoning remains in effect when it incorporates under this charter. The new municipality must rezone the property or rescind the zoning that applied at the time of incorporation.

6-1-209. Sample Petition. This section provides a sample petition for incorporating under this charter.

6-1-301 to 6-1-306. These provisions regarding surrender of the mayor-aldermanic charter were added. They mirror the manager-commission charter.

Chapter 2

Powers of Municipalities with the Charter

6-2-101. Publication of Ordinances - Codification. Now, only the caption of an ordinance must be published — not the ordinance itself or its caption and a complete summary.

6-2-102. Ordinance Procedure. All ordinances may be considered and passed on two separate days. There's no longer a requirement that the ordinance be read aloud at the meeting or that ordinances involving appropriations need a third reading:

6-2-201. General Powers. The list of municipal powers in the manager-commission charter has been adopted here into the mayor-aldermanic charter. Authority is given to assess user or impact fees to fund a variety of municipal services (items 14, 15, 19, and 29).

Chapter 3

Board of Mayor and Aldermen

6-3-101. Election of Board - Municipalities Incorporating Under Chapters 1 through 4 of the Title after June 30, 1991. For all municipalities adopting this charter after June 30, 1991, the following governmental structure is required:

- at least one ward, but no more than eight wards. (For municipalities with more than 5,000 people, at least two wards are required.)
- the mayor elected at large.
- two aldermen from each ward. If there are more than four wards, however, only one alderman per ward is allowed, or a maximum of eight aldermen.
- four-year staggered terms of office.

Upon a two-thirds majority vote of the board, number of aldermen and number of wards may be

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increased or decreased so long as there is compliance with the points outlined above.

6-3-102. Election of Board - Municipalities Incorporating Under Title 6, Chapters 1 to 2, Inclusive, on or prior to June 30, 1991. This paragraph contains the only grandfather provision in the new charter. It provides that municipalities operating under the charter prior to July 1, 1991 can continue to operate with their existing governmental structure. There's no requirement, for example, that a municipality without wards create them, or that a municipality with two-year non-staggered terms of office change to four-year staggered terms. However, a municipality may, by ordinance, establish wards, increase or decrease the number of wards or aldermen to comply with §6-3-101, and change to four-year staggered terms of office.

6-3-103. Residence Requirements for Officers. This section requires someone to live in a ward for one year before he or she is eligible to run for alderman. Moving from the ward vacates the position.

6-3-106. Duties of Mayor. This section represents the most dramatic change in the mayor-aldermanic charter. The mayor now can exercise all administrative and executive authority without board approval of his or her decisions. Thus, implicit in this section is an obligation of the board to decide who handles the administrative responsibilities of the municipality. If the board doesn't delegate these duties to someone else, by default the mayor must perform them.

In subsection (a)(1-7), there's a list of executive functions mayors in most mayor-aldermanic municipalities have performed, such as signing contracts, presiding over meetings, appointing persons to boards, calling special meetings, and making temporary employment decisions.

Subsection (b) provides that the mayor or a mayoral appointee perform the following duties **unless the board designates otherwise**:

- the city administrator duties listed in §6-4-101;
- all personnel duties, including hiring and firing employees and department heads;
- purchasing responsibilities;
- annual budget preparation; and
- any other duties required by the board.

6-3-107. Vice-Mayor - Vacancies in Office. The only change in this section is that — **when filling board vacancies** — the mayor has two votes if they're needed to break a deadlock.

6-3-108. Duties of the Board. The board may:

- appoint department heads and officers. (However, to appoint department heads, the board must designate it wants to exercise this function. Otherwise, the duty of appointing department heads is the mayor's.)
- appoint a city administrator.
- elect a presiding officer in the absence of the mayor and vice-mayor.

6-3-109. Compensation. The compensation of the officers now may be set in the annual budget. Compensation may not decrease, but may increase, during a term of office.

Chapter 4

Officers and Department Heads

6-4-101. Duties of City Administrator. This section lists duties the board may, by ordinance, give a city administrator. (However, the mayor continues to make all employment decisions, act as purchasing agent, and prepare the budget unless the board gives these duties to the administrator in this ordinance.) Turn to Appendix A for a sample ordinance establishing the position and duties of city administrator.

6-4-201 through 6-4-204. City Recorder. This section is consistent with the city recorder duties under the manager-commission charter.

6-4-301. City Judge - Jurisdiction - Appointment. This section now is consistent, for the most part, with the manager-commission charter. In addition, if the municipality chooses to exercise concurrent jurisdiction, specific authority is provided to elect a judge who meets the constitutional qualifications of the lower court. The municipality may also choose to designate the county general sessions judge to sit as municipal court judge.

6-4-401 and 402. Treasurer. The old charter didn't mention a treasurer, and these provisions are consistent with the manager-commission charter. In §6-4-402, the municipality is required to designate, by ordinance, the official depository for municipal funds.

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What Revisions Will Change The Way We Operate Now?

Familiarize yourself with the new streamlined ordinance procedures in §6-2-102. There's no longer the requirement that an ordinance be read, but only that it be considered. Also, all ordinances pass on second reading.

The powers that a mayor-aldermanic municipality may exercise, listed in §6-2-201, have been updated and expanded. For example, your municipality now has clear authority to exact user fees and charges to help fund certain improvements.

The grandfather provision in §6-3-102 allows your municipality to continue to operate with its current governmental structure. You may continue to be represented on an at-large basis, have more than eight aldermen, and have two- or four-year non-staggered terms. However, if your board chooses to alter its existing structure and, for example, move to ward representation or change the length of office terms, it must do so in accordance with §6-3-101 — that is, the board may not move from two-year non-staggered terms to two-year staggered terms, but must move to four-year staggered terms. Similarly, if it adopts wards, it may not adopt less than two wards if the population is greater than 5,000, nor may it increase the number of aldermen to more than eight. Any changes must comply with the parameters set out in §6-3-101.

As previously stated, the most significant change — and one of the few changes that may require some board action — is the revision of the mayor and board duties in §§6-3-106 and 6-3-108. **Under the old charter, most duties were exercised under the direction and control of the board. This is no longer the case, unless the board so specifies in a motion or, preferably, a resolution or ordinance.** The mayor has the authority to exercise the duties of a city administrator, make all personnel decisions, act as the purchasing agent, prepare and submit the budget, and any other duties required by the board. If the board wishes to exercise any or all of these duties or delegate some of these responsibilities to department heads, it must say so. There's no requirement that this designation be in an ordinance or resolution. However, MTAS recommends it so the responsibilities and duties of the officers and department heads — and their relationships to each other — are clear.

Another important change is the ability of the mayor to break a deadlock when filling vacancies on the board. Deadlocks occur in this situation with some frequency, so this provision prevents your municipality from operating without a full board.

§6-3-109 concerns compensation of officers and is dramatically altered. Board compensation always has been set by ordinance and previously couldn't be increased or decreased during a term of office. Now, the board's compensation may be set in the annual budget and increased during an office term.

What Must We Do To Comply With The New Charter?

If your municipality hasn't already, it must:

- appoint a treasurer. The city recorder may be appointed as treasurer.
- provide for a municipal court. In the absence of an appointed or elected city judge, the recorder fills the slot.
- pass an ordinance officially designating the depository for municipal funds pursuant to §6-4-402. Turn to Appendix B for a sample ordinance. The board must require security for deposits at least equal to that required for state deposits (collateral with a market value equal to 105 percent of the value of the deposit, less the amount insured by the Federal Deposit Insurance Corporation).

Also, it's a good idea for the board to review new powers of the mayor and the existing administrative structure, and decide who exercises what authority and under whose direction and control. To help boards that don't want the mayor to exercise the full range of duties listed in §6-3-106, or who want to continue to control those decisions, Appendix A contains a sample resolution with alternative provisions for delegating the responsibility elsewhere.

For further help interpreting the new charter, contact your MTAS municipal management consultant in Knoxville (615) 974-0411, Nashville (615) 256-8141, or Jackson (901) 423-3710.

¹ *Tennessee Code Annotated* §6-1-201(d).

² §6-1-202(c).

Appendix A

Sample Ordinance Ordinance No. _____

AN ORDINANCE OF THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF _____ CREATING AND ESTABLISHING THE OFFICE OF CITY ADMINISTRATOR, DEFINING THE DUTIES AND POWERS THEREOF, AND PROVIDING COMPENSATION THEREFOR.

WHEREAS, the Board of Mayor and Aldermen wants to create the office of city administrator in accordance with *Tennessee Code Annotated*, §6-4-101; and

WHEREAS, *Tennessee Code Annotated*, §6-4-101, requires the Board of Mayor and Aldermen to specify the duties of the city administrator in an ordinance; and

WHEREAS, *Tennessee Code Annotated*, §6-3-106, gives the mayor of the City of _____ certain duties unless the Board of Mayor and Aldermen designates otherwise; and

WHEREAS, the Board of Mayor and Aldermen wants the city administrator to perform certain administrative duties, including some of the duties listed as mayoral duties under *Tennessee Code Annotated*, §6-3-106(b);

NOW THEREFORE BE IT ORDAINED by the Board of Mayor and Aldermen of the City of _____:

Section 1.

A new Chapter ____ of the City of _____ Municipal Code is hereby adopted and reads as follows:

Section ___. Office Created.

Section ___. Powers and Duties.

Section ___. Compensation.

___. There is hereby created and established the position of city administrator. The city administrator shall be appointed by the Board of Mayor and Aldermen (herein board) wholly on the basis of administrative ability and qualifications and shall hold office for and at the pleasure of the board. The city administrator shall devote full time to the duties of his or her office.

___. The city administrator shall act under the direction and control of and shall be responsible to the board and shall perform the following duties:

- (a) duties listed in *Tennessee Code Annotated*, §6-4-101;
- (b) employ, promote, discipline, suspend, and discharge all employees in accordance with the personnel policies and procedures, if any, adopted by the Board of Mayor and Aldermen, and keep personnel files on all employees;
- (c) act as purchasing agent for the municipality in the purchase of all materials, supplies, and equipment for the proper conduct of the municipality's business, provided that all purchases shall be made in accordance with policies, practices, and procedures established by the board;
- (d) prepare and submit the annual budget and capital program to the board for its adoption by ordinance;
- (e) any other duties as may be required by resolution of the board.

___. The city administrator shall receive such compensation as the board shall from time to time direct.

Section 2.

This ordinance shall take effect from and after its passage and publication, the municipal welfare requiring it.

Passed First Consideration _____

Mayor

Passed Second Consideration _____

Recorder

Sample Resolution
(where no city administrator will be appointed)

WHEREAS, *Tennessee Code Annotated*, §6-3-106, gives the mayor of the City of _____ certain duties unless the Board of Mayor and Aldermen designates otherwise; and

WHEREAS, the Board of Mayor and Aldermen wants to [exercise certain duties itself] [delegate certain duties to] the [finance director] [city recorder] [other department head];

NOW THEREFORE BE IT RESOLVED by the Board of Mayor and Aldermen of the City of _____ as follows:

Section 1. The administrative duties set forth in *Tennessee Code Annotated*, §6-4-101, shall be performed by the [city recorder] [administrative assistant] [other department head].

Section 2. The Board of Mayor and Aldermen shall employ, promote, discipline, suspend, and discharge all employees and department heads, in accordance with personnel policies and procedures, if any are adopted by the Board of Mayor and Aldermen.

or

Section 2. The mayor shall employ, promote, discipline, suspend, and discharge all employees and department heads, subject to approval by the Board of Mayor and Aldermen. Any personnel action taken by the mayor shall be in accordance with personnel policies and procedures, if any, adopted by the board.

Section 3. The [finance director] [city recorder] [administrative assistant] [other department head] shall act as purchasing agent for the municipality in the purchase of all materials, supplies, and equipment for the proper conduct of the municipality's business, provided that all purchases shall be made in accordance with policies, practices, and procedures established by the board.

Section 4. The [finance director] [city recorder] [administrative assistant] [other department head] shall prepare and submit the annual budget and capital program to the board for its adoption by ordinance.

THIS RESOLUTION will take effect from the date it is approved, the public welfare requiring it.

Mayor

City Recorder

Approved _____

Appendix B

Ordinance No. _____

An Ordinance to Designate an Official Depository

BE IT ORDAINED by the City of _____, Tennessee, as follows:

Section 1. The _____ is hereby designated as the official depository for funds of the City of _____.

Section 2. This ordinance shall take effect from and after its passage, the welfare of the city requiring it.

Passed 1st reading _____

Mayor

Passed 2nd reading _____

City Recorder

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