Legal Responsibilities of City Recorders and Clerks

Presented by Melissa Ashburn, MTAS Legal Consultant

What are my duties?
Sources to consult:
- Charter
- Code of ordinances
- General laws
  We’ll examine each source, and highlight those responsibilities held by recorders and clerks
  We’ll also review certification requirements, and continuing education requirements

Recorder Duties:
- Where do you spend your time?
- What are you doing?
Recorder Duties:
First place to look, to determine your duties owed to the city, is your municipal charter. It will reveal:
- Your official title (recorder/clerk)
- How appointed/elected
- Term of office
- Who you report to (mayor/board)
- How you are replaced

Recorder Duties: Charters
Charter is your city’s “constitution.”
Lists the authority and powers of your city government.
Specific information contained in your charter varies according to what type of charter your city has.
Important to understand what powers your city has first.....

Charters: Municipal Powers, in General
Cities depend upon the state legislature for their existence and powers.
Cities have 3 kinds of powers:
- Express (stated in charter and law)
- Implied (from express powers)
- Essential (cannot exist without)
Any doubt about whether a city has a power is resolved against a city.
Types of Municipal Charters in Tennessee

- Private Act
- General Law
- Home Rule

Private Act Charters

- Apply only to that city (212 in TN).
- General law charters and other private act charters do not apply.
- General laws do apply.

  - Urban growth
  - Eminent domain
  - Zoning

General Law Charters

- Found in T.C.A.
- Three types:
  - Mayor-Aldermanic (67)
  - City Manager-Commission (47)
  - Modified Council Manager (2)
- Metro Government Charters (special case)
- General laws also apply.
Metro Government Charters
- Outlined in T.C.A.
- Developed by charter commission.
- Charter content will vary.
- Adopted by referendum.
- General laws also apply.

Metropolitan Government
- Three in Tennessee
  - Nashville/Davidson
  - Lynchburg/Moore
  - Hartsville/Trousdale

Home Rule Charters
- Authorized by constitution.
- Home rule status approved by referendum
- Charter can remain or be revised.
- Legislature cannot pass private act affecting city.
- General laws also apply.
- 14 home rule chartered cities in TN.
What Your Charter Contains

- Number and types of officers
- Form of government
  - Board of mayor and aldermen
  - City council
- Vacancies in office
  - How determined and replaced
- Election procedures
  - District or at large
  - Specific list of powers

What Your Charter Contains

- Officer and board authority
- Finance & budget restrictions
- Ordinance & meeting requirements
  - How often board meets
  - Special called meeting procedures
  - Quorum requirements
  - How many readings required
  - Caption of ordinances
- Personnel rules (not often)

What Your Charter Contains: City Recorder Office

- Your position/duties described
  - Duties vary according to charter type/language
- Who you report to
  - Mayor, City Manager, or governing body
- How you are appointed
- Your term of office
- Your oath of office
- Any bonding requirements
**What Your Charter Contains: Recorder/Clerk Duties**

- Typical duties stated in charters:
  - Keep minutes, keep records of all business transacted by board, assist governing body, keep all records (including ordinances and resolutions, bonds, contracts, etc.)
- Other duties stated in charters:
  - May also be finance director, treasurer, personnel director, purchasing agent, city judge
  - How many hats do you wear?

**What are my duties?**

- After consulting city charter, and all statements concerning city recorder/clerk duties,
- Next step – review code of ordinances for other duties assigned

**Municipal Codes**

- Compilation of city’s ordinances
- Groups ordinances by subject matter
- Single reference point for city’s laws and regulations
- Updates are essential
**City Code of Ordinances**

- General rule – the smaller the city, the more duties are assigned to the recorder.
- If no other city office designated for specific function, it usually falls to the city recorder.
- Many code sections assigning functions to recorders are based on general laws.

**City Code of Ordinances**

- Code is “controlled” by charter.
- Meaning – cannot do something in code that is not permitted by charter.
- Example – board cannot pass ordinance making city recorder the personnel director or finance director unless the charter permits that delegation of authority.
- Such code provisions are invalid, unless consistent with charter.

**What are my duties?**

*City Code of Ordinances*

- Most codes state the city recorder fulfills the following city functions:
  - keeps forms and receives applications
  - issues permits/licenses
  - responds to records requests
  - keeps personnel files
  - collects certain taxes
  - responsible for all public notices
  - keeps “model codes” adopted by reference.
What are my duties?
City Code of Ordinances
- Forms and applications function examples
  - Records requests
  - Beer permits
  - Contract/service bid documents
- Permits and licensing function examples
  - Excavation of city streets/sidewalks
  - Peddlers/charitable solicitors
  - Parades
  - Business licenses

So what is the same for all cities???
- Certain Tennessee Laws

State Laws
- Budget Law
- Purchasing Law
- Open Meetings
- Open Records
- Municipal Planning
- Municipal Zoning
- Beer and Liquor
**Budget Law**
- TCA 6-56-201 et seq.
- Applies to all cities
  - With few exceptions
  - Some cities have charter provisions that control
- What this means to you:
  - City recorders schedule public hearings and publish notices about budget (6-56-206)
  - Notices include proposed budget, with comparison to last and current years, anticipated revenues, expenditures and all fund balances

**Purchasing Law**
- TCA 6-56-301 et seq.
- Applies to all cities
  - Except those cities having charter provisions or private act requirements governing competitive bidding and purchasing.
- What this means to you:
  - City recorders handle advertising and bidding function, as well as keeping all records

**Open Records**
- All records are open unless otherwise provided by law. (T.C.A. 10-7-503)
- Public has right to inspect and copy.
- Subject to reasonable rules and charges
- If denied access, citizen can petition court for order to release. (T.C.A. 10-7-505)
- Yes, this is another function that is usually performed by city recorders
**Open Records**

- Most important resource for open records issues – **Office of Open Records Counsel**
- Forms, instructions for use, guidelines
- Opinions, including those on redaction of confidential information
- If use forms, follow guidelines and opinions, have “safe harbor”
Open Records Counsel

Forms from website you should use:
- Records request form
- Records production form letter
- Request denial form letter
- Schedule of reasonable fees
- “Safe harbor” policy
  • Be sure to check website for latest versions
Note: Model policy must be adopted 7/1/17

Exceptions to Open Records Law

- Employee EAP records: 10-7-504(d), and HIPPA
- Employee medical records: HIPPA
- Credit card numbers: 10-7-504(a)(19)
- Certain info in personnel records: 10-7-503(f)(1)
  - Home phone and personal cell phone numbers
  - Bank account information
  - Social security numbers
  - Residential street address
  - Drivers license numbers (unless required for job)
- Undercover police officer personal information:
  More info made confidential under 10-7-504(g)

Exceptions to Open Records Law

- Library check-out records: 10-8-102
- Unpublished telephone numbers held by E911 centers or utility departments: 10-7-504
- Contingency plans for response to terrorist incident
- Student records
- Any information which would allow a person to obtain unauthorized access – such as passwords
Open Meetings Law

- “All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.” (T.C.A. 8-44-102(a))
- You must provide notice of all public meetings
- You must keep minutes of all public meetings

Open Meetings Law: Definitions

- **Governing Body** - “any public body with the authority to make decisions for or recommendations to a public body on policy or administration”
- **Meeting** - “convening of a governing body of a public body for which a quorum is required in order to make decisions or to deliberate toward a decision on any matter”

Open Meetings

*Because the determination often falls on you…*

- What about meetings of less than a quorum?
  - Informational or fact-gathering – Can be closed
  - Deliberation or decision making – Must be open
  - But only 2 required to violate the law
- Be careful - most conversations could be considered “deliberations”
- Public perception
- E-mail communications can be violations
- If violation, action taken is voided
Open Meetings
- Attorney-Client Exception
- Discussion concerns pending or threatened litigation
- Discussion is informational only
- Deliberations and decision making on information shared in closed session must be public.

Open Meetings: Minutes
- T.C.A. 8-44-104 – Minutes must:
  - Be "promptly and fully recorded"
  - Be “open to public inspection”
  - Shall include:
    - A record of persons present
    - All motions, proposals and resolutions offered
    - The results of any vote taken
    - If roll call, a record of individual votes

Open Meetings: Notice
- T.C.A. 8-44-103 – Notice of meetings
- “Adequate public notice” required
  - Not defined in statute
  - Courts define as "adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public.” Memphis Publishing Company v. City of Memphis, 513 S.W.2d 511, 513 (Tenn. 1974).
Open Meetings: Notice

Best Practice:
- Use a few different types of notice, to reach different people in your city
- Posting at city hall is free
- Notice through local media (newspaper, radio)
- Combine with website posting (web posting alone not sufficient, but should combine with other types of notice)

Open Meetings: Notice

Ordinance adopted by board stating meetings will be held on a regular date each month is not sufficient notice of public meetings
- Public instead needs to know what will be discussed at each meeting, so agenda should be posted
  - Agenda must be finalized in time for notice

City Recorder Certification

T.C.A. 6-54-120 requires municipal clerks and recorders to become certified.
Certification requires 100 hours of education, plus
18 hours of continuing education every 3 years to keep certification active.
There are exceptions, and alternatives……
City Recorder Certification

Exemptions to certification requirement:
- Clerks for cities with less than 1,500 population
- Clerks who are licensed attorneys
- Clerks who are current CPAs
- City manager may act as clerk without certification if has a masters in public administration

City Recorder Certification

How do you get education/training hours?
- 25 hours credit if have an associate of arts or sciences degree
- 50 hours of credit if have a bachelor degree
- Attend TAMCAR seminars
- Attend training classes offered by MTAS, TML, and others, including on-line classes
- Have 4 years after hire date to become certified

Municipal Clerks

Visit the website of the Secretary of State to get more information and details about Municipal Clerks.
Thank You!

Your attention and participation is greatly appreciated.

Call MTAS if you have any questions:
(865)974-0411