County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

May 20, 2024

Regulatory Powers

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

Regulatory Powers 3
- **Powers to Prevent and Abate Nuisances** 3
  - **Local Adoption** 3
  - **Jurisdiction** 3
  - **Exempted Activities** 3
  - **Grandfathered Uses** 4
  - **Constitutional Limitations** 4
  - **Enforcement** 4
  - **Other Methods of Enforcement** 5
- **Cable TV Regulation** 5
- **Debris Removal and Weed Control** 6
- **Regulation of Adult-Oriented Entertainment and Massage** 6
- **Animal Control** 6
- **Contractor Permits and Bonds** 7
- **Guns on Public Property** 7
- **Distilleries** 9
  - **Sample Distilleries Resolution** 10
- **Motor Vehicle Races** 11

Regulatory Powers

Reference Number: CTAS-562
County regulatory powers include all of the following:

Regulation of Beer Sales

Powers to Prevent and Abate Nuisances

Reference Number: CTAS-563
In 2002, the General Assembly amended a part of the County Powers Act to authorize counties without zoning to exercise the certain regulatory powers granted to municipalities under T.C.A. § 6-2-201(22) and (23). T.C.A. § 5-1-118. The powers are described in the law as the ability to:

- Define, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, businesses, occupations, callings, trades, uses of property and all other things whatsoever detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the municipality, and exercise general police powers; and

- Prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of the people may lawfully be established, conducted or maintained. T.C.A § 6-2- 201(22) and (23).

The next year, the General Assembly revisited the statute and expanded its application to allow all counties the ability to use these powers after adoption of a local resolution by a two-thirds (2/3) vote of the county legislative body.

Limitations on the Exercise of Regulatory Authority. While this new authority is a broad expansion of county regulatory power, the grant of authority came with several restrictions. The exercise of these powers by counties is limited in a number of ways by both the statute itself and the state and federal constitutions.

Local Adoption

Reference Number: CTAS-564
Even though all counties are eligible to exercise the powers in T.C.A. § 6-2-201(22) and (23), a county may not pass any such regulations pursuant to that authority unless it first adopts those powers by a resolution passed by a two-thirds (2/3) majority of the county legislative body. Also, Chapter 57 of the Public Acts of 2003 clarified that the county must not only pass such a resolution by a two-thirds (2/3) majority but also must pass any subsequent regulations by a two-thirds (2/3)majority. T.C.A. § 5-1- 118.

Jurisdiction

Reference Number: CTAS-565
By law, the authority granted to counties by T.C.A. § 5-1-118(c) may be exercised only in the unincorporated areas of the county. Additionally, the law states that it should not be construed to allow any county to prohibit or in any way impede any municipality in exercising any lawful municipal power or authority.

Exempted Activities

Reference Number: CTAS-566
The law also exempts certain businesses and practices from regulation. The powers conferred upon counties by T.C.A. § 5-1-118(c) do not apply to the following activities, which are regulated under other provisions of general law:

- Sale of beer and alcoholic beverages;
- Wholesale of beer;
- Surface mining; production of oil and gas;
- Activities covered by environmental protection laws and regulations dealing with air pollution, atomic energy, solid waste disposal and management, landfills, hazardous waste management, petroleum underground storage, oil spill cleanup, dry cleaning, water, wastewater and sewerage;

- Water management;
- Wells; and
- Dams.

Additionally, T.C.A. § 5-1-118(b) provides that counties may not use these powers to prohibit or regulate normal agricultural activities.

Grandfathered Uses

Reference Number: CTAS-567

In T.C.A. § 5-1-118(c)(3), the law provides further that all court decisions and statutory laws relating to variances and nonconforming uses applicable to zoning ordinances and land use controls shall apply to the enforcement and exercise of these new regulatory powers. For example, if a county determined that the sound of planes taking off and landing at an airport could potentially be a nuisance to surrounding residential properties and passed a regulation prohibiting the location of an airport within one-half mile of a residential property, this regulation may limit the location of future airports in the county, but an airport that was in existence at the time the regulation was passed that violated the distance rule would be allowed to continue to operate as a pre-existing nonconforming use.

Constitutional Limitations

Reference Number: CTAS-568

As with all government action, regulations passed under this new authority must be both written and enforced in such a manner that they do not violate the constitutional rights of people affected by the regulations. For example, the county could not pass a regulation that prohibited passing out literature of a political nature. This would obviously violate a citizen's First Amendment right to freedom of speech. The county could not pass regulations prohibiting religious ceremonies or the ownership of guns. The regulations could not discriminate on the basis of race, gender, or other protected classes. These limits are obvious. Issues that are more likely to arise would involve challenges that a regulation resulted in taking property without just compensation or failed to provide due process. If the regulation is so burdensome on a property owner that the owner can no longer get use, enjoyment, or value out of the property, a court may find that the regulation effectively "took" the value of the property from the owner without providing compensation. In that case, the regulation may be struck down, or the county may be required to compensate the injured property owner. Due process problems may arise if citizens are not provided a means to dispute or appeal a penalty under the regulation. Part of providing due process in a regulation also involves giving the public adequate notice of the regulation. This standard of adequate notice requires a regulation to be clear in its language and application so that those affected understand the regulation. If a county regulation is so vague that the public cannot ascertain what conduct is regulated or how it is regulated, it may be struck down as unconstitutional.

Enforcement

Reference Number: CTAS-569

The laws passed in 2002 and 2003 did not include any specific provisions regarding how these new regulatory powers would be enforced. Therefore, enforcement will fall under existing statutory authority. As part of the original "County Powers Act," the legislature passed T.C.A. §§ 5-1-121 and 5-1-123. These statutes authorize enforcement of county regulations by monetary penalties and direct that the general sessions court is the proper venue for enforcement of the regulations. In T.C.A. § 5-1- 121, the legislature provided that the penalties for violation could be up to $500 per violation; however, subsequent court decisions probably place limits on this monetary penalty. *See Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001). According to the Tennessee Supreme Court in that case, a punitive fine levied by a local government cannot exceed $50 unless the defendant is allowed to have a jury trial. Higher fines could be enforced if they are remedial in nature rather than punitive, but this distinction is difficult to make. Therefore, a county should generally limit monetary penalties to $50 or less per violation. Penalty provisions of any regulations should be carefully considered by the county attorney. The county attorney should also be involved in the development of any regulations as he or she will most likely be involved in enforcing the regulations and defending any legal challenges to the regulations. Attorney General's Opinion 03-024 states that ordinances or regulations passed under T.C.A. 5-1-118(c) are to be enforced by a civil lawsuit brought on behalf of the county. The attorney general further opined that since the statutory scheme does not designate a specific officer to prosecute ordinance violations, it appears that suits to enforce a regulation would be brought by the county attorney.

Other Methods of Enforcement

Reference Number: CTAS-2179

In addition to the authority granted to counties by the County Powers Act, counties may also file suit to abate nuisances pursuant to T.C.A. § 29-3-101 *et seq*. Under this set of statutes, petitions can be brought in the name of the state, upon relation of the attorney general and reporter, or any district attorney general, or any city or county attorney, or without the concurrence of any such officers, upon the relation of ten (10) or more citizens and freeholders of the county wherein such nuisances may exist. T.C.A. § 29-3-102.

The court is authorized to issue a temporary injunction during the proceedings and if the court finds that a nuisance exists at the conclusion of the case, the court will issue an order of abatement. T.C.A. §§ 29-3-105, 110. As part of the order of abatement, the court may assess costs of public services required to abate or manage the nuisance, including, but not limited to, law enforcement costs, if any, caused by the public nuisance. The governmental entity must submit evidence of such costs to the court in order to be reimbursed. T.C.A. § 29-3-110.

Cable TV Regulation

Reference Number: CTAS-570

With the passage of the "Competitive Cable and Video Services Act" of 2008, codified at Title 7, Chapter 59, cable providers now have the option of obtaining either a statewide cable franchise or a local cable franchise from a county or municipality. While the cable act does make major changes to state cable franchise law, many areas of the prior law have been expressly preserved. For example, the act does not alter existing state law relating to local control of the public right-of-way nor does it alter existing law relating to the police powers of local governments. Furthermore, the new act does not alter or restrict the right of counties or municipalities to impose ad valorem taxes, sales taxes, or other taxes of general applicability. One important change that was made, however, was to the customer service provisions. Under the new act, FCC customer service standards will apply to statewide franchise holders, while local franchise requirements will continue to be applicable to local franchise holders. For statewide franchise holders, customer complaints will be handled by the Tennessee Regulatory Authority. Local governments will continue to handle complaints under local franchise agreements.

Before taking any action regarding cable television or other telecommunications services, counties must consult three major pieces of federal legislation: the Cable Communications Policy Act of 1984 (47 U.S.C. § 521 *et seq*.), the Cable Television Consumer Protection Act of 1992, and the Telecommunications Act of 1996. This last act, effective as of February 8, 1996, is the first major overhaul of federal telecommunications law since 1934. The intent of the 1996 act is to reduce regulation of these services on all levels and promote competition within and between the different industries that are beginning to overlap due to new technology. Basically, this means that the distinction between cable, telephone, video and other communications industries is becoming blurred as companies begin offering multiple services and many new companies enter this field.

Local and state regulations that prohibit or have the effect of prohibiting any entity from providing telecommunications services are pre-empted by this federal statute (Section 253, Telecommunications Act of 1996). However, this limitation is not intended to prevent local governments from managing public rights of way and receiving fair and reasonable compensation for the use of the right of way, as long as it is done in a competitively neutral and nondiscriminatory manner. Counties should prepare for the expansion of these fields and begin developing a comprehensive plan for the management of public rights of way.

Federal law provides that a state or other franchising authority (including counties) may also hold an ownership interest in a cable service. 47 U.S.C.A. § 533. However, until recently, counties in Tennessee lacked the authority to operate a cable television franchise. Op. Tenn. Att'y Gen. 88-170 (Sept. 20, 1988). In recent years, the General Assembly has amended Title 7, Chapter 52, of the *Tennessee Code Annotated* to allow municipalities that operate an electric plant to enter into the telecommunications service field. "Municipality" is defined under that Chapter of the code to include both metropolitan governments and counties. Under T.C.A. § 7-52-401 *et seq*., municipalities are authorized to provide telephone, telegraph or telecommunications services through the board or supervisory authority that operates the electric system. This industry is highly regulated by both the Tennessee Regulatory Authority and the Federal Communications Commission. Any telecommunications system operated by a county would have to conform to all such regulations and requirements. Also, under T.C.A. § 7-52-601 *et seq*., the same municipalities are authorized to provide cable television services, two-way video transmission, video programming, Internet services or similar services. Title 7, Chapter 52, Parts 4 and 6,

include extensive regulations regarding how such services may be provided and how the utility must be structured. These laws, as well as the federal laws discussed above, should be thoroughly consulted by any local government interested in entering these arenas.

Debris Removal and Weed Control

Reference Number: CTAS-571

Counties are granted permissive authority regarding the removal of overgrown vegetation, accumulated debris, and vacant dilapidated buildings or structures in the county. Owner-occupied residences are not included, except in certain counties designated by narrow population class. T.C.A. § 5-1-115. Owners of the property are to be provided with notice to remedy the situation before the county may act. Counties are granted a lien on the property for the cost of remedying or removing the situation. This statute's enforcement mechanisms include the placing of lien on the property to reimburse the county for the cost of removing the garbage, litter or refuse and imposing a monetary penalty enforceable in general sessions court. T.C.A. § 5-1-121.

Additionally, counties are authorized to adopt regulations for litter control under T.C.A. § 39-14-508. The regulations promulgated by a county pursuant to this statute may require property owners to conform their property to the regulations by removal of garbage, litter, refuse or rubbish. The statute requires the county to send a statement to the owner itemizing the cost of the removal and provides that the statement shall constitute a lien upon the property if the owner fails to reimburse the county for the cost of the removal within sixty (60) days, sets out the priority of the lien when filed, and specifies that the lien shall be filed with the register of deeds of the county in which the property lies. The full resolution, or the caption and a complete summary of the resolution, must be published after its final passage in a newspaper of general circulation in the county and the resolution cannot take effect until it is published.

Regulation of Adult-Oriented Entertainment and Massage

Reference Number: CTAS-572

The primary state law that grants counties the authority to license and regulate adult- oriented establishments and entertainers is the Adult-Oriented Establishment Registration Act of 1998, T.C.A. § 7-51-1101 *et seq*. This act replaces a former and somewhat similar registration act, which was declared unconstitutional by a federal district court. *Brothers Three Enterprises v. Knox County*, No. CIV-3-89-0035 (E.D. Tenn., N.D., February 4, 1991). This registration law is optional for county governments and may be adopted by a two-thirds (2/3) majority of the county legislative body. An important change to this act occurred in 2008. In 2008 Public Chapter 1085, T.C.A. §§ 7-51-1102, 7-51-1109, and 7-51-1110 were amended to permit county legislative bodies to choose an alternative appeals procedure for denials of adult establishment applications and revocations of permits for adult establishments. Currently, if the adult-oriented establishment board affirms the denial of an application or the revocation of a permit, the county attorney files suit for declaratory judgment to confirm the decision was properly made. The county legislative body can now opt into a different procedure in which the aggrieved party shall have the right to appeal the board's decision by common-law writ of certiorari. The county legislative body may rescind its election at any time.

Another general state law governs the location and hours of operation of adult-oriented establishments codified at T.C.A. § 7-51-1401 *et seq*. This law prohibits these businesses, except those offering only live stage shows, adult cabaret, or dinner show type settings, from opening before 8 a.m. or remaining open after midnight Monday through Saturday. On Sundays and legal holidays they must remain closed. Local governments may establish shorter hours of operation, but may not extend the hours. The act provides that these businesses cannot be located within 1000 feet of child care facilities, public/private charter schools, public parks, residences, family recreation centers or places of worship. The act also contains regulations regarding the structure and type of lighting in viewing booths, and specifies penalties for violations.

Although under previous law counties could adopt an optional act to regulate massage services within the county, those statutes have been repealed and superseded by general law enacting a state licensing system in T.C.A. § 63-18-101 *et seq*. Under that law, a state board performs all licensing and regulatory functions that were formerly under the authority of the county board.

Animal Control

Reference Number: CTAS-573

The county legislative body, by resolution, may "license and regulate dogs and cats, establish and operate shelters and other animal control facilities, and regulate, capture, impound and dispose of stray dogs,

stray cats and other stray animals." T.C.A. § 5-1-120.

It is unlawful to own, keep or harbor a dog or cat six months old or older that has not been vaccinated for rabies by or under the supervision of a veterinarian. Counties and municipalities are authorized to adopt local resolutions or ordinances to require registration of dogs or cats in their jurisdiction. Any such local laws must include methods for collecting registration fees and must require expenditure of the funds solely to establish and maintain a rabies control program, to conduct animal control activities, to ensure that dogs and cats are properly vaccinated and that biting animals or rabies suspects are observed or confined in accordance with state law and regulations. If the local law meets or exceeds the minimum requirements of the state law, the local law, not the state law, will apply in that jurisdiction. T.C.A. § 68-8-101, *et seq*.

Contractor Permits and Bonds

Reference Number: CTAS-574

A county legislative body, by resolution adopted by a two-thirds majority vote, may require certain contractors to register with a department of codes administration or other appropriate agency and post a permit bond before engaging in activities subject to this law. If adopted, the contractors affected include those who contract to perform the following services:

- Construction, erection, alteration, repair, removal, or demolition of any building or structure or part thereof;
- Repair or replacement of any damage to a building or structure caused by insects or natural disaster;
- Erection or construction of signs or billboards; or
- Construction of swimming pools.

A bond of $10,000 is required for building permits under $25,000, and a bond of $50,000 is required for permits of $25,000 or more. A bond of $40,000 is required for all gas/mechanical, plumbing and excavation permits. Also, if adopted, this law requires the contractor to secure a contractor's business license. Contractors of multiple trades or contractors involved with work on more than one structure may provide one $50,000 bond to meet the requirements of the law. Nonprofit housing ministries are exempt from this law. T.C.A. § 62-6-137.

Guns on Public Property

Reference Number: CTAS-575

Guns on School Property. Pursuant to TCA § 39-17-1309, it is an offense for any person to possess or carry, whether openly or concealed, any firearm, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, used or operated by any board of education. It is not an offense for a nonstudent adult to possess a firearm, if the firearm is contained within a private vehicle operated by the adult and is not handled by the adult, or by any other person acting with the expressed or implied consent of the adult, while the vehicle is on school property.

Guns in Parks. Pursuant to T.C.A. § 39-17-1311, it is legal for persons with a valid handgun carry permit to carry a handgun while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place owned or operated by the state, a county, a municipality, or instrumentality of the state, a county, or municipality. However, it is illegal for a person with a handgun carry permit to carry a handgun on such property while it is in use by any board of education, school, college or university board of trustees, regents, or directors for the administration of any public or private educational institution for the purpose of conducting an athletic event or other school-related activity on an athletic field, permanent or temporary, including but not limited to, a football or soccer field, tennis court, basketball court, track, running trail, Frisbee field, or similar multi-use field; and the person knew or should have known the athletic activity or school-related activity was taking place on the property; or failed to take reasonable steps to leave the area of the athletic event or school-related activity after being informed of or becoming aware of its use. See Op. Tenn. Att'y Gen.15-63 (July 29, 2015) (Possession of Firearms in Public Parks Owned by Counties and Municipalities).

Guns in County Buildings. Pursuant to T.C.A. § 39-17-1359, a local government entity or agent thereof is authorized to prohibit the possession of weapons by any person who is at a meeting conducted by, or on property owned, operated, or managed or under the control of the government entity. The prohibition also applies to a person who is authorized to carry a firearm pursuant to T.C.A. § 39-17-1351.

In 2017, the legislature amended the statute by adding the following:

A county is not authorized to enact or enforce a prohibition or restriction on the possession of a handgun by a handgun carry permit holder on property owned or administered by the entity unless the following are provided at each public entrance to the property:

(1) Metal detection devices;

(2) At least one (1) law enforcement or private security officer who has been adequately trained to conduct inspections of persons entering the property by use of metal detection devices; and

(3) That each person who enters the property through the public entrance when the property is open to the public and any bag, package, and other container carried by the person is inspected by a law enforcement or private security officer or an authorized representative with the authority to deny entry to the property.

These restrictions do not apply to:

(1) Facilities that are licensed under title 33, 37, or 68;

(2) Property on which firearms are prohibited by § 39-17-1309 or § 39-17-1311(b)(1)(H)(ii);

(3) Property on which firearms are prohibited by § 39-17-1306 at all times regardless of whether judicial proceedings are in progress;

(4) Buildings that contain a law enforcement agency, as defined in § 39-13-519;

(5) Libraries; or

(6) Facilities that are licensed by the department of human services, under title 71, chapter 3, part 5, and administer a Head Start program.

Guns in Trunks. Notwithstanding T.C.A. § 39-17-1309, T.C.A. § 39-17-1311, or T.C.A. § 39-17-1359, unless expressly prohibited by federal law, the holder of a valid handgun carry permit recognized in Tennessee may transport and store a firearm or firearm ammunition in the permit holder's privately owned motor vehicle while on or utilizing any public or private parking area if-

(1) The permit holder's vehicle is parked in a location where it is permitted to be; and

(2) The firearm or ammunition being transported or stored in the vehicle:
(A) Is kept from ordinary observation if the permit holder is in the motor vehicle; or
(B) Is kept from ordinary observation and locked within the trunk, glove box, or interior of the person's motor vehicle or a container securely affixed to such motor vehicle if the permit holder is not in the motor vehicle. T.C.A. § 39-17-1313.

A handgun carry permit holder transporting, storing or both transporting and storing a firearm or firearm ammunition does not violate the law if the firearm or firearm ammunition is observed by another person or security device during the ordinary course of the handgun carry permit holder securing the firearm or firearm ammunition from observation in or on a motor vehicle.

Pursuant to T.C.A. § 50-1-312, no employer may discharge or take any adverse employment action against an employee solely for transporting or storing a firearm or firearm ammunition in an employer parking area in a manner consistent with T.C.A. § 39-17-1313. An employee discharged, or subject to an adverse employment action, in violation of T.C.A. § 50-1-312 (b)(1)(A) shall have a cause of action against the employer to enjoin future acts in violation of this section and to recover economic damages plus reasonable attorney fees and costs.

Except as otherwise provided in T.C.A. § 39-17-1313 for parking areas, nothing in T.C.A. § 50-1-312 shall be construed as prohibiting an employer from prohibiting firearms or firearm ammunition on the premises of the employer.

Cause of Action Against County

A party who is adversely affected by an ordinance, resolution, policy, rule, or other enactment that is adopted or enforced by a county or any county agency, department, or official that violates T.C.A. § 39-17-1314(g); or is adversely affected by the creation or maintenance of a record, database, registry, or collection of records, in violation of T.C.A. § 39-17-1305, by a local government entity, official, employee, or agent, may file an action in a court of competent jurisdiction against the county for:

(A) Declaratory and injunctive relief; and
(B) Damages.

T.C.A. § 39-17-1314(g)(1) applies to any ordinance, resolution, policy, rule, or other enactment dealing with the local regulation of firearms that is adopted or enforced on or after July 1, 2017, or any record, database, registry, or collection of records that is made or maintained on or after July 1, 2021.

As used in T.C.A. § 39-17-1314(g), a party is "adversely affected" if:

1. The party is an individual who:
(A) Lawfully resides within the United States;
(B) May legally possess a firearm under Tennessee law; and
(C) Is or was subject to the ordinance, resolution, policy, rule, or other enactment or was included as an entry on a database, registry, or collection of records, that is the subject of an action filed under subsection (g). An individual is or was subject to the ordinance, resolution, policy, rule, or other enactment if the individual is or was physically present within the boundaries of the political subdivision for any reason; or

2. The party is a membership organization that:
(A) Includes two (2) or more individuals described in T.C.A. § 39-17-1314 (h)(1); and
(B) Is dedicated in whole or in part to protecting the rights of persons who possess, own, or use firearms for competitive, sporting, defensive, or other lawful purposes.

T.C.A. § 39-17-1314(h).

A prevailing plaintiff in an action under T.C.A. § 39-17-1314(g) is entitled to recover from the county the following:

1. The greater of:
(A) Actual damages, including consequential damages, attributable to the ordinance, resolution, policy, rule, enactment, database, registry, or collection of records; or
(B) Three (3) times the plaintiff's attorney's fees;
2. Court costs, including fees; and
3. Reasonable attorney's fees; provided, that attorney's fees shall not be awarded under T.C.A. § 39-17-1314 (i)(3) if the plaintiff recovers under T.C.A. § 39-17-1314(i)(1)(B).

T.C.A. § 39-17-1314(i).

Distilleries

Reference Number: CTAS-2117

Distilleries for the manufacture of intoxicating liquors can be permitted in counties in two ways: (1) by voter referendum; or (2) without a voter referendum, if either of the following circumstances exist:

(A) Both retail package sales and consumption of alcoholic beverages on the premises have been approved through voter referendum of the voters in any jurisdiction(s) located within the county; or

(B) The county is included in the Tennessee River resort district and retail package sales have been approved through voter referendum of the voters in any jurisdiction(s) located within the county.

Distilleries By Referendum

Tenn. Code Ann. § 57-2-103 generally governs the manufacture of intoxicating liquors in Tennessee. Under that statute, the manufacture of intoxicating liquors is permitted in any county where the majority of voters have, by referendum, approved a resolution permitting it within the county. Tenn. Code Ann. § 57-2-103(a) - (c)

Tenn. Code Ann. § 57-2-103(a) - (c) sets forth the procedure that is followed to determine whether such a referendum may be presented to the voters. If 10% of the qualified voters in a county sign a petition to present the question whether the manufacture of liquor will be permitted within a county, the county commission must call an election on the question. Tenn. Code Ann. § 57-2-103(a) - (b). If a majority of the votes are cast in favor of the question, then the manufacture of liquor is permitted within that county. Tenn. Code Ann. § 57-2-103(c).

Distilleries Without Referendum

However, another procedure is set forth in Tenn. Code Ann. § 57-2-103(d). Notwithstanding subsections (a) - (c), it is lawful to manufacture intoxicating liquors or intoxicating drinks, or both, within the boundaries of:

(A) A municipality if both retail package sales and consumption of alcoholic beverages on the premises have been approved through referendum of voters within such municipality;

(B) The unincorporated areas of a county, or a municipality which has a population of less than one thousand (1,000) persons in such county, if any jurisdiction located within such county has approved retail package sales through referendum of voters and any jurisdiction located within such county has approved consumption of alcoholic beverages on the premises through referendum of

voters or if the county is included in the Tennessee River resort district as defined in § 57-4-102 and retail package sales have been approved through referendum by the voters in any jurisdiction within such county;

(C) Any municipality authorized under § 57-4-102(26) to allow facilities or establishments in such municipality to sell alcoholic beverages or wine for on premises consumption;

(D) Any county or municipality where it was lawful to have manufacturing of intoxicating liquors or intoxicating drinks, or both under this subsection (d) as it read prior to July 1, 2013; or

(E) Any county that has at least three (3) establishments, located in such county or in any municipality in such county, licensed under § 57-4-102(26) to sell alcoholic beverages for on-premises consumption if such county was included in this subsection (d) as it read prior to July 1, 2013.

Tenn. Code Ann. § 57-2-103(d)(1)(A) - (E).

Resolution to Prohibit Distilleries

Notwithstanding subdivision (d)(1), the county legislative body of any such county may adopt a resolution to remove the unincorporated areas of the county from the application of subsection (d) subject to certain restrictions. The county mayor must notify the Alcoholic Beverage Commission if such action is taken and approved by the county legislative body. Tenn. Code Ann. § 57-2-103(d)(2)(A).

This action may be taken by the county legislative body pursuant to subdivision (d)(2)(A) until a written notification is filed with the county mayor by any person as an official notice that the person intends to pursue all lawful avenues to manufacture intoxicating liquors or intoxicating drinks, or both, within the unincorporated areas of the county. Once the notice is filed, no action may be taken by the county legislative body unless such interest is withdrawn or the person's application to manufacture such intoxicating liquors or intoxicating drinks, or both, is denied by the state or federal government. Tenn. Code Ann. § 57-2-103(d)(2)(B). NOTE: Pursuant to Public Chapter 445, a written notification as described above may not be filed with the county mayor until at least 45 days after July 1, 2013.

If a county adopts a resolution pursuant to subdivision (d)(2)(A), the county may at a later date adopt a resolution reversing such action. The county mayor must notify the Alcoholic Beverage Commission if such action is taken and approved. Tenn. Code Ann. § 57-2-103(d)(2)(c).

Sample Distilleries Resolution

Reference Number: CTAS-2119

SAMPLE

RESOLUTION TO REMOVE THE UNINCORPORATED AREAS OF THE

COUNTY FROM THE APPLICATION OF T.C.A. § 57-2-103(d).

WHEREAS, *Tennessee Code Annotated*, Section 57-2-103(d)(2)(A), authorizes the County Legislative Body to adopt a resolution to remove the unincorporated areas of the county from the application of T.C.A. § 57-2-103(d), relative to manufacturing of alcoholic beverages; and

WHEREAS, it is in the best interests of the citizens of this county that such action be taken;

NOW THEREFORE BE IT RESOLVED by a vote of the _____ County Legislative Body meeting in _____ session at _____, Tennessee on this the ___ day of _____, 20___, that:

SECTION 1. By action of the County Legislative Body, the unincorporated areas of the _____ County, in accordance with T.C.A. § 57-2-103(d)(2)(A), are hereby removed from the application of T.C.A. § 57-2-103(d).

SECTION 2. The County Mayor shall notify the Alcoholic Beverage Commission that this action has been taken and approved.

SECTION 3. The resolution shall take effect upon passage, the public welfare requiring it.

Adopted this _____ day of _____, 20___.

APPROVED:

_____
County Mayor

ATTEST:

_____

Motor Vehicle Races

Reference Number: CTAS-2460
County legislative bodies are authorized to provide the times, dates, and conditions under which motor vehicle races may be conducted, and establish any other rules relative to the regulation and licensure of automobile race tracks that the county legislative body deems prudent and advisable. T.C.A. § 55-22-102. Special provisions for motor vehicle races in tourist resort counties are set out in T.C.A. § 55-22-105.

The county clerk is required to verify that anyone conducting a motor vehicle race in the county has met the minimum insurance coverage requirements set out in T.C.A. § 55-22-101(a), and the county clerk thereupon issues to the applicant confirmation that the requirements have been met. T.C.A. § 55-22-101(c).

This law does not define "motor vehicle race." While T.C.A. § 55-22-102 does mention "automobile race tracks," the Attorney General has found that because the legislature repeatedly used the broader term "motor vehicle," it did not intend to limit the statute's requirements to automobile races. As used in this law, "motor vehicle" should be interpreted in its broadest sense, which would include any self-propelled wheeled conveyance not running on rails. Op. Tenn. Att'y Gen. 17-20 (3/21/17).

Source URL: *https://www.ctas.tennessee.edu/eli/regulatory-powers*