

AMENDING COMPREHENSIVE GROWTH PLANS

David Connor, CTAS Legal Consultant, and Dennis Huffer, MTAS Legal Consultant
May 2005



CTAS

**County Technical
Assistance Service**

*In cooperation with the Tennessee County
Services Association and the County Officials
Association of Tennessee*



MTAS

**Municipal Technical
Advisory Service**

*In cooperation with the
Tennessee Municipal League*

Executive Summary

The three-year moratorium during which cities and counties (except for Shelby County and its cities) were prohibited from amending their comprehensive growth plans absent extraordinary circumstances has now passed for most cities and counties. Some communities have amended their growth plans and others are considering amendments. The steps to follow in amending the comprehensive growth plan are summarized below. These issues are discussed in more detail following the executive summary.

1. The city or county wanting to amend the plan must do research and examine factors that are appropriate to the area to be designated, and identify territory suitable for inclusion in the area. The city or county must hold two public hearings for which public notice has been published at least 15 days before the meeting.
2. The city or county proposing the amendment must file notice with the mayors of each municipality in the county and the county mayor or executive.
3. The coordinating committee must be reconvened, most likely upon notice from the county mayor or executive.
4. The coordinating committee must hold two public hearings for which at least 15 days notice is published. The burden is on the party proposing the amendment to show it is reasonable.
5. The coordinating committee must vote on whether to recommend the amendment.
6. The coordinating committee shall submit its recommendations regarding any amendments to the governing body of the county and each city in the county for ratification. Each has 120 days to ratify or reject the amendment. Failure to act signifies ratification.
7. If a city or county rejects the amendment, it must submit its objections to the coordinating committee. The coordinating committee then reconsiders its action.
8. After reconsideration, the coordinating committee may recommend a revised amendment and submit it to the local governments for consideration.
9. If this amendment is rejected, the city or county may declare an impasse and request mediation through the secretary of state's office.
10. Approved amendments must be submitted to the local government planning advisory committee for approval. Locally ratified amendments receive automatic LGPAC approval. In all other cases, LGPAC must examine the plan to ensure that it complies with law. After approval the plan is filed in the register's office.

Amending Comprehensive Growth Plans

INTRODUCTION

When the General Assembly passed Tennessee's Comprehensive Growth Policy Law in 1998, it required cities and counties across Tennessee to work together to develop a comprehensive growth plan. For cities and counties that had a completed plan in place by July 1, 2000, there were incentives and benefits. For cities and counties that did not have an approved plan in place by July 1, 2001, there were penalties. Nearly every community in Tennessee that was required by the law to have a plan met the July 1, 2001, deadline.

For all counties under the act except Shelby County, the law provided that once a growth plan was agreed upon by local governments and was approved by the local government planning advisory committee, it was to remain in effect for not less than three years, absent a showing of extraordinary circumstances (T.C.A. § 6-58-104(d)(1)). [For Shelby County, there was no waiting period and amendments could be proposed immediately. See T.C.A. § 6-58-104(d)(2).] For most cities and counties in Tennessee, this three-year window has now passed. A few communities have amended or begun considering amendments to their comprehensive growth plan. The purpose of this brief memorandum is to outline the steps and procedures that local governments should follow when considering amendments to a comprehensive growth plan.

THE LAW

There was very little content in the comprehensive growth policy law that related

to the process of amending plans in the future. What direction there is may be found in T.C.A. § 6-58-104(d)(1).

(d)(1) After the local government planning advisory committee has approved a growth plan, the plan shall stay in effect for not less than three (3) years absent a showing of extraordinary circumstances. After the expiration of the three-year period, a municipality or county may propose an amendment to the growth plan by filing notice with the county executive and with the mayor of each municipality in the county. Upon receipt of such notice, such officials shall take appropriate action to promptly reconvene or re-establish the coordinating committee. The burden of proving the reasonableness of the proposed amendment shall be upon the party proposing the change. *The procedures for amending the growth plan shall be the same as the procedures in this section for establishing the original plan.* (emphasis added)

The key provision is the last sentence which states that the same procedures apply to amending the growth plan as were used to establish the original plan.

DEVELOPING AND PROPOSING AMENDMENTS

When the original growth plan was developed each city went through a statutory process to develop an urban growth boundary and propose it to the coordinating committee. Likewise, each county developed planned growth and/or rural areas and submitted them to the coordinating

committee. Since T.C.A. § 6-58-104(d)(1) states that amendments to the growth plan must be adopted in the same manner as the plan was originally established, it is assumed that any city or county proposing an amendment to the plan must follow the same procedures used to originally develop and propose an urban growth boundary, planned growth area, or rural area in developing the proposed amendment. These requirements are found in T.C.A. § 6-58-106(a), (b), and (c). Essentially, they require a city or county to research and examine certain factors that are appropriate to the type of area to be designated, identify the territory suitable to be placed in that area, and conduct two public meetings prior to making recommendations to the coordinating committee. These public meetings must be advertised in a newspaper of general circulation in the municipality or county not less than 15 days before the meeting, with the notice indicating the time, place, and purpose of the public meeting. Cities and counties should follow these same procedures prior to proposing any amendments to the growth plan. According to the attorney general, if one local government is proposing an amendment but another city or the county does not intend to respond formally to the proposed change or propose an alternative amendment to the growth plan of its own, there would be no need for that city or county to go through the research and public hearing process (Op. Tenn. Att’y Gen. 03-154 (December 2, 2003)). In the same opinion the attorney general also opined that a municipality or county may begin the research and public hearing process for developing amendments prior to the termination of the three-year waiting period, but the new coordinating committee may not be formed

or begin considering any proposed amendments until after the three-year period has expired. Even if a city or county does not make a formal proposal to the coordinating committee, nothing would prevent the representative of that local government on the coordinating committee from participating fully in the process and making suggestions or proposals during the deliberations of the coordinating committee.

REQUESTING CONSIDERATION OF AN AMENDMENT

After the three-year waiting period has passed, either the county or any municipality within a county may then propose an amendment to the growth plan. To initiate the process, the local government desiring an amendment must file notice with the mayor of all municipalities in the county and with the county mayor. Upon receipt of that notice, the mayors of the cities and county are directed by law to take action to reconvene or re-constitute the coordinating committee that originally drafted the growth plan for the county.

RECONVENING THE COORDINATING COMMITTEE

If all the original participants in the coordinating committee still hold the same positions or are still amenable to representing the same interests, the committee may be reconvened. If some of the original participants no longer hold the same positions (for example, a mayor who represented a city the first time around is no longer in office), then those positions need to be reappointed by the authorities designated in T.C.A. § 6-58-104(a)(1). While the law requires a party proposing an amendment to provide notice to city and county mayors of the need to

reconvene the committee, some of the members of the committee represent interests other than cities and counties. For instance, the board of the local education agency with the largest student enrollment has a representative on the committee. When notice is provided to mayors, someone (most likely the county mayor) needs to contact those other entities represented on the coordinating committee to notify them that the committee is being reconvened and give them the opportunity to designate their representative.

CONSIDERATION BY THE COORDINATING COMMITTEE

Once it is reconstituted or reconvened, the committee may begin consideration of any proposed amendments to the growth plan. The law states that the burden of proving the reasonableness of the proposed amendment shall be upon the party proposing the change (T.C.A. § 6-58-104(d)(1)). Before reaching a final decision on proposed amendments, the coordinating committee must also conduct two public hearings (T.C.A. § 6-58-104(a)(3)). The county is required to give at least 15 days notice of the time, place, and purpose of each public hearing by notice published in a newspaper of general circulation throughout the county. After those hearings are held and the coordinating committee has had adequate time for deliberation, it should vote on whether proposed amendments to the growth plan should be adopted. Once the coordinating committee makes its determination, it should submit its decision and any recommended amendments to the growth plan to the county and all cities in the county for consideration and ratification.

LOCAL CONSIDERATION OF THE AMENDMENTS

Once the recommendations of the coordinating committee are received by the governing bodies of the county and municipalities, each governing body has 120 days to ratify or reject any proposed amendments (T.C.A. § 6-58-104(a)(4)). There is no requirement for further public hearings during this phase of the process. Failure to act by a governing body within the 120-day period is deemed to constitute ratification of the recommendation of the coordinating committee. If a city or county rejects the recommendation of the coordinating committee, the law directs it to submit its objections and the reasons therefore to the coordinating committee (T.C.A. § 6-58-104(a)(5)). The coordinating committee then reconsiders its action. After reconsideration, it may recommend a revised amendment and re-submit it to the local governments for consideration.

MEDIATION AND DISPUTE RESOLUTION

If the revised or recommended amendment is rejected, then, as with the original plan, the county or any municipality may declare an impasse and request the secretary of state to provide an alternative method for resolution of disputes. This involves the appointment of a panel of three administrative law judges to mediate the dispute unless the county and all municipalities agree to use a single administrative law judge. The secretary of state certifies the reasonable and necessary costs of the dispute resolution panel. The county and cities are required to reimburse the secretary of state for the costs of dispute resolution on a pro rata basis; provided that, if the panel determines that the process was necessitated or

unduly prolonged by bad faith or frivolous actions on the part of the county and/or one or more municipalities, then the secretary of state, upon recommendation of the panel, may reallocate liability of the cost of dispute resolution in a manner that is punitive to the party responsible for the bad faith or frivolous actions.

SUBMISSION OF AMENDMENTS TO THE LOCAL GOVERNMENT PLANNING ADVISORY COMMITTEE

Once any amendments to the growth plan are approved locally, they should be submitted to the local government planning advisory committee (LGPAC) for approval. If the amendment was ratified by all appropriate local governments, then approval by LGPAC is automatic. In all other cases, LGPAC is directed by law to examine the plan to ensure that the boundaries

and areas designated in the plan conform to the requirements of the law. After approval of the plan, a copy is sent to the county mayor, who in turn files the plan in the county register's office.

WAITING PERIOD

In 2003, the attorney general was asked whether amended growth plans also have to be left undisturbed through a three-year waiting period before they may be amended again. The attorney general concluded that, although amendments were to go through the same process used to adopt the original plan, the three-year waiting period was not a part of this process, but a condition put in place subsequent to the creation of a plan. Therefore, there would be no waiting period after a plan was amended before additional amendments could be proposed and considered (Op. Tenn. Att'y Gen. 03-154 (December 2, 2003)).

UT | CTAS
County Technical Assistance Service
In cooperation with the Tennessee County Services Association and the County Officials Association of Tennessee

UT | MTAS
Municipal Technical Advisory Service
In cooperation with the Tennessee Municipal League

Nashville (Headquarters)	(615) 532-3555
Cookeville	(931) 525-3535
Chattanooga	(423) 425-5319
Jackson	(731) 423-3710
Johnson City	(423) 282-4141
Knoxville	(865) 974-0667
Martin	(731) 881-7056

Knoxville (Headquarters).....	(865) 974-0411
Johnson City.....	(423) 854-9882
	(423) 282-0416
Nashville.....	(615) 532-6827
Jackson.....	(731) 423-3710
Martin.....	(731) 587-7057

www.ctas.tennessee.edu **UT** www.mtas.tennessee.edu

The University of Tennessee is an EEO/AA/Title VI/Title IX/Section 504/ADA/ADEA institution.
 CTAS0176 • E15-1570-000047-05