

TITLE 12

BUILDING, UTILITY, ETC. CODES

CHAPTER

1. BUILDING CODE.
2. PLUMBING CODE.
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11. OFFICE OF ADMINISTRATIVE HEARING OFFICER.

CHAPTER 1

BUILDING CODE¹

SECTION

- 12-101. Building code adopted.
 12-102. Modifications.
 12-103. Available in recorder's office.
 12-104. Violations and penalty.

12-101. Building code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of regulating the construction, alteration, repair, use, occupancy, location, maintenance, removal, and demolition of every building or structure or any appurtenance connected or attached to any building or structure, the *International Building Code*,² 2018 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as

¹Municipal code references

Fire protection, fireworks, and explosives: title 7.

Planning and zoning: title 14.

Streets and other public ways and places: title 16.

Utilities and services: titles 18 and 19.

²Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

a part of this code as fully as if copied herein verbatim, and is hereinafter referred to as the building code. (modified, as amended by Ord. #23-50, March 2023)

12-102. Modifications. The following sections are hereby revised to read as follows:

(1) Definitions. Whenever the words "Building Official" are used in the building code, they shall refer to the person designated by the board of mayor and aldermen to enforce the provisions of the building code.

(2) *International Building Code*, 2018 edition, section 101.1 Insert: City of Niota.

(3) *International Building Code*, 2018 edition, section 1612.3 Insert: City of Niota.

(4) *International Building Code*, 2018 edition, section 1612.3 Insert: Date of Issuance.

(5) *International Building Code*, 2018 edition, section 1613 through section 1616.3, and all sections derived from chapter 16 and any other sections relating to SEISMIC Standards, regulations and provisions are hereby deleted. (as amended by Ord. #23-50, March 2023)

12-103. Available in recorder's office. Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the building code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

12-104. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the building code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 2

PLUMBING CODE¹

SECTION

- 12-201. Plumbing code adopted.
- 12-202. Modifications.
- 12-203. Available in recorder's office.
- 12-204. Violations and penalty.

12-201. Plumbing code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of regulating plumbing installations, including alterations, repairs, equipment, appliances, fixtures, fittings, and the appurtenances thereto, within or without the city, when such plumbing is or is to be connected with the city water or sewerage system, the *International Plumbing Code*,² 2018, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code as fully as if copied herein verbatim, and is hereinafter referred to as the plumbing code. (as amended by Ord. #23-50, March 2023)

12-202. Modifications. The following sections are hereby revised to read as follows:

Definitions. Whenever the words "Building Official" are used in the plumbing code, they shall refer to the person designated by the board of mayor and aldermen to enforce the provisions of the plumbing code.

12-203. Available in recorder's office. Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the plumbing code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

¹Municipal code references

Cross-connections: title 18.

Street excavations: title 16.

Wastewater treatment: title 18.

Water and sewer system administration: title 18.

²Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

12-204. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the plumbing code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 3

FUEL GAS CODE

SECTION

- 12-301. Title and definitions.
- 12-302. Purpose and scope.
- 12-303. Available in the recorder's office
- 12-304. Use of existing piping and appliances.
- 12-305. Bond and license.
- 12-306. Gas inspector and assistants.
- 12-307. Powers and duties of inspector.
- 12-308. Permits.
- 12-309. Inspections.
- 12-310. Certificates.
- 12-311. Fees.
- 12-312. Nonliability.
- 12-313. Violations and penalty.

12-301. Title and definitions. This chapter and the code herein adopted by reference shall be known as the gas code of the city. The following definitions are provided for the purpose of interpretation and administration of the gas code.

(1) "Building official" shall refer to the person designated by the board of mayor and aldermen to enforce the provisions of the gas code.

(2) "Certain appliances" means conversion burners, floor furnaces, central heating plants, vented wall furnaces, water heaters, and boilers.

(3) "Certificate of approval" means a document or tag issued and/or attached by the inspector to the inspected material, piping, or appliance installation, filled out, together with date, address of the premises, and signed by the inspector.

(4) "Gas company" means any person distributing gas within the corporate limits or authorized and proposing to so engage.

(5) "Inspector" means the person appointed as inspector, and shall include each assistant inspector, if any, from time to time acting as such under this chapter by appointment of the mayor.

(6) "Person" means any individual, partnership, firm, corporation, or any other organized group of individuals.

12-302. Purpose and scope. The purpose of the gas code is to provide minimum standards, provisions, and requirements for safe installation of consumer's gas piping and gas appliances. All gas piping and gas appliances installed, replaced, maintained, or repaired within the corporate limits shall conform to the requirements of this chapter and to the *International Fuel Gas*

Code,¹ 2018 edition, is hereby adopted and incorporated by reference and made a part of this chapter as if fully set forth herein and shall be referred to as the gas code. (as amended by Ord. #23-50, March 2023)

12-303. Available in recorder's office. Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the gas code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

12-304. Use of existing piping and appliances. Notwithstanding any provision in the gas code to the contrary, consumer's piping installed prior to the adoption of the gas code or piping installed to supply other than natural gas may be converted to natural gas if the inspector finds, upon inspection and proper tests, that such piping will render reasonably satisfactory gas service to the consumer and will not in any way endanger life or property; otherwise, such piping shall be altered or replaced, in whole or in part, to conform with the requirements of the gas code.

12-305. Bond and license. (1) No person shall engage in or work at the installation, extension, or alteration of consumer's gas piping or certain gas appliances, until such person shall have secured a license as hereinafter provided, and shall have executed and delivered to the mayor a good and sufficient bond in the penal sum of ten thousand dollars (\$10,000.00), with corporate surety, conditioned for the faithful performance of all such work, entered upon or contracted for, in strict accordance and compliance with the provisions of the gas code. The bond herein required shall expire on the first day of January next following its approval by the recorder, and thereafter on the first day of January of each year a new bond, in form and substance as herein required, shall be given by such person to cover all such work as shall be done during such year.

(2) Upon approval of said bond, the person desiring to do such work shall secure from the recorder a nontransferable license which shall run until the first day of January next succeeding its issuance, unless sooner revoked. The person obtaining a license shall pay any applicable license fees to the recorder.

(3) Nothing herein contained shall be construed as prohibiting an individual from installing or repairing his own appliances or installing, extending, replacing, altering, or repairing consumer's piping on his own premises, or as requiring a license or a bond from an individual doing such work on his own premises; provided, however, all such work must be done in

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conformity with all other provisions of the gas code, including those relating to permits, inspections, and fees.

12-306. Gas inspector and assistants. To provide for the administration and enforcement of the gas code, the office of gas inspector is hereby created. The inspector, and such assistants as may be necessary in the proper performance of the duties of the office, shall be appointed or designated by the board of mayor and aldermen.

12-307. Powers and duties of inspector. (1) The inspector is authorized and directed to enforce all of the provisions of the gas code. Upon presentation of proper credentials, he may enter any building or premises at reasonable times for the purpose of making inspections or preventing violations of the gas code.

(2) The inspector is authorized to disconnect any gas piping or fixture or appliance for which a certificate of approval is required but has not been issued with respect to same, or which, upon inspection, shall be found defective or in such condition as to endanger life or property. In all cases where such a disconnection is made, a notice shall be attached to the piping, fixture, or appliance disconnected by the inspector, which notice shall state that the same has been disconnected by the inspector, together with the reason or reasons therefor, and it shall be unlawful for any person to remove said notice or reconnect said gas piping or fixture or appliance without authorization by the inspector and such gas piping or fixture or appliance shall not be put in service or used until the inspector has attached his certificate of approval in lieu of his prior disconnection notice.

(3) It shall be the duty of the inspector to confer from time to time with representatives of the local health department, the local fire department, and the gas company, and otherwise obtain from proper sources all helpful information and advice, presenting same to the appropriate officials from time to time for their consideration.

12-308. Permits. (1) No person shall install a gas conversion burner, floor furnace, central heating plant, vented wall furnace, water heater, boiler, consumer's gas piping, or convert existing piping to utilize natural gas without first obtaining a permit to do such work from the mayor; however, permits will not be required for setting or connecting other gas appliances, or for the repair of leaks in house piping.

(2) When only temporary use of gas is desired, the recorder may issue a permit for such use, for a period of not to exceed sixty (60) days, provided the consumer's gas piping to be used is given a test equal to that required for a final piping inspection.

(3) Except when work in a public street or other public way is involved the gas company shall not be required to obtain permits to set meters, or to

extend, relocate, remove, or repair its service lines, mains, or other facilities, or for work having to do with its own gas system.

12-309. Inspections. (1) A rough piping inspection shall be made after all new piping authorized by the permit has been installed, and before any such piping has been covered or concealed or any fixtures or gas appliances have been attached thereto.

(2) A final piping inspection shall be made after all piping authorized by the permit has been installed and after all portions thereof which are to be concealed by plastering or otherwise have been so concealed, and before any fixtures or gas appliances have been attached thereto. This inspection shall include a pressure test, at which time the piping shall stand an air pressure equal to not less than the pressure of a column of mercury six inches (6") in height, and the piping shall hold this air pressure for a period of at least ten (10) minutes without any perceptible drop. A mercury column gauge shall be used for the test. All tools, apparatus, labor, and assistance necessary for the test shall be furnished by the installer of such piping.

12-310. Certificates. The inspector shall issue a certificate of approval at the completion of the work for which a permit for consumer piping has been issued if after inspection it is found that such work complies with the provisions of the gas code. A duplicate of each certificate issued covering consumer's gas piping shall be delivered to the gas company and used as its authority to render gas service.

12-311. Fees. There shall be charged a fee of three dollars (\$3.00) for each gas permit issued. This fee shall include the costs of one inspection to be made by the gas inspector. Should additional inspections be necessary, there shall be an added charge of one dollar (\$1.00) for each such inspection.

12-312. Nonliability. This chapter shall not be construed as imposing upon the municipality any liability or responsibility for damages to any person injured by any defect in any gas piping or appliance mentioned herein, or by installation thereof, nor shall the municipality, or any official or employee thereof, be held as assuming any such liability or responsibility by reason of the inspection authorized hereunder or the certificate of approval issued by the inspector.

12-313. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the gas code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable under the general penalty provision of this code, or the license of such person may be revoked, or both fine and revocation of license may be

imposed. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 4

RESIDENTIAL CODE

SECTION

- 12-401. Residential code adopted.
- 12-402. Modifications.
- 12-403. Available in recorder's office.
- 12-404. Violations and penalty.

12-401. Residential code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of providing building, plumbing, mechanical and electrical provisions, the *International Residential Code*,¹ 2018 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code as fully as if copied herein verbatim, and is hereinafter referred to as the residential code. (as amended by Ord. #23-50, March 2023)

12-402. Modifications. The following sections are hereby revised to read as follows:

(1) **Definitions.** Whenever the words "Building Official" are used in the residential code, they shall refer to the person designated by the board of mayor and aldermen to enforce the provisions of the residential code.

(2) *International Residential Code*, 2018 edition, section R313.1 regarding automatic sprinkler systems in townhouses, replace the existing exception; "An automatic residential fire sprinkler system shall not be required if a two-hour fire resistance rated wall exists between units, provided that walls do not contain plumbing and /or mechanical equipment, ducts, or vents in common wall.

(3) Delete *International Residential Code*, 2018 edition, section R313.2 automatic sprinkler systems in 1 and 2 family dwellings. (as amended by Ord. #23-50, March 2023)

12-403. Available in recorder's office. Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the residential code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

12-404. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the residential code as herein

¹Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 5

ENERGY CONSERVATION CODE¹

SECTION

- 12-501. Energy conservation code adopted.
- 12-502. Modifications.
- 12-503. Available in recorder's office.
- 12-504. Violations and penalty.

12-501. Energy conservation code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of regulating the design of buildings for adequate thermal resistance and low air leakage and the design and selection of mechanical, electrical, water-heating and illumination systems and equipment which will enable the effective use of energy in new building construction, the *International Energy Conservation Code*,² 2018 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code, and are hereinafter referred to as the energy code. (as amended by Ord. #23-50, March 2023)

12-502. Modifications. The following sections are hereby revised to read as follows:

- (1) Building official. Whenever in the energy code these words are used, they shall refer to the person designated by the board of mayor and aldermen shall have appointed or designated to administer and enforce the provisions of the energy code.
- (2) *International Energy Conservation*, Code 2018 edition, section R402.4.1.2 testing is deleted and replaced with section 402.4.2.1 testing option and section 402.4.2.2 visual inspection option from *International Energy Conservation*, Code, 2009 edition.
- (3) *International Energy Conservation Code*, 2018 edition, section R403.3.3 duct testing and section R403.3.4 dust leakage are optional.

¹Municipal code references

Fire protection, fireworks, and explosives: title 7.

Planning and zoning: title 14.

Streets and other public ways and places: title 16.

Utilities and services: titles 18 and 19.

²Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

(4) *International Energy Conservation Code*, 2018 edition, table 42.1.2 insulation and fenestration requirements by component and table R402.1.4 equivalent U-factors are deleted and replaced with table 402.1.1 insulation and fenestration requirements by component and table 402.1.3 equivalent U-factors *International Energy Conservation Code*, 2009 edition. (as amended by Ord. #23-50, March 2023)

12-503. Available in recorder's office. Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the energy code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

12-504. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the energy code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 6

MECHANICAL CODE¹

SECTION

- 12-601. Mechanical code adopted.
- 12-602. Modifications.
- 12-603. Available in recorder's office.
- 12-604. Violations and penalty.

12-701. Mechanical code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of regulating the installation of mechanical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and/or appurtenances thereto, including ventilating, heating, cooling, air conditioning, and refrigeration systems, incinerators, and other energy-related systems, the *International Mechanical Code*,² 2018 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code as fully as if copied herein verbatim and is hereinafter referred to as the mechanical code. (as amended by Ord. #23-50, March 2023)

12-602. Modifications. The following sections are hereby revised to read as follows:

Definitions. Whenever the words "Building Official" are used in the mechanical code, they shall refer to the person designated by the board of mayor and aldermen to enforce the provisions of the mechanical code.

12-603. Available in recorder's office. Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the mechanical code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

12-604. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the mechanical code as herein adopted. The violation of any section of this chapter shall be punishable by a

¹Municipal code references

Street excavations: title 16.

Wastewater treatment: title 18.

Water and sewer system administration: title 18.

²Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 7

PROPERTY MAINTENANCE CODE**SECTION**

- 12-701. Property maintenance code adopted.
12-702. Modifications.
12-703. Available in recorder's office.
12-704. Violations and penalty.

12-701. Property maintenance code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said *International Property Maintenance Code*,¹ 2018 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code as fully as if copied herein verbatim, and is hereinafter referred to as the property maintenance code. (modified)

12-702. Modifications. The following sections are hereby revised to read as follows:

(1) **Definitions.** Whenever the words "Building Official" are used in the property maintenance code, they shall refer to the person designated by the board of mayor and aldermen to enforce the provisions of the property maintenance code.

12-703. Available in recorder's office. Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the property maintenance code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

12-704. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the property maintenance code as herein adopted by reference and modified. The violation of any section of this

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chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 8

EXISTING BUILDING CODE

SECTION

- 12-801. Existing building code adopted.
- 12-802. Modifications.
- 12-803. Available in recorder's office.
- 12-804. Violations and penalty.

12-801. Existing building code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of providing a concise set of regulations and procedures to effect safety in occupancy, the *International Existing Building Code*,¹ 2018 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code as fully as if copied herein verbatim, and is hereinafter referred to as the existing building code. (modified)

12-802. Modifications. The following sections are hereby revised to read as follows:

Definitions. Whenever the words "Building Official" are used in the existing building code, they shall refer to the person designated by the board of mayor and aldermen to enforce the provisions of the existing building code.

12-803. Available in recorder's office Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the existing building code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

12-804. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the existing building code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

¹Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

CHAPTER 9

SWIMMING POOL AND SPA CODE

SECTION

12-901. Swimming pool code adopted.

12-902. Available in recorder's office.

12-903. Violations and penalty.

12-901. Swimming pool code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-516, and for the purpose of regulating the minimum requirements for the design, construction, alteration, repair and maintenance of swimming pools, spas, hot tubs and aquatic facilities, the *International Swimming Pool and Spa Code*,¹ 2018 edition, as prepared by the International Code Council, is hereby adopted and incorporated by reference as part of this code except as otherwise specifically stated in the chapter and is hereinafter referred to as the swimming pool code. (modified)

12-902. Available in recorder's office. Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the swimming pool code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

12-903. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the swimming pool and spa code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

CHAPTER 10

ACCESSIBILITY CODE

SECTION

11-1001. Accessibility code adopted.

11-1002. Modifications.

11-1003. Available in recorder's office.

11-1004. Violations and penalty.

11-1001. Accessibility code adopted. The *American National Standard, Accessible and Usable Building and Facilities Code (ICC/ANSI A117.1-2017)*,¹ is hereby adopted and incorporated by reference as a part of this code as fully as if copied herein verbatim, and is hereinafter referred to as the accessibility code. (Ord. #23-50, March 2023)

11-1002. Modifications. The following sections are hereby revised to read as follows:

Definitions. Whenever the words "Building Official" are used in the accessibility code, they shall refer to the person designated by the board of mayor and aldermen to enforce the provisions of the accessibility code.

11-1003. Available in recorder's office. Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the accessibility code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

11-1004. Violations and penalty. It shall be unlawful for any person to violate or fail to comply with any provision of the accessibility code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

CHAPTER 11

ADMINISTRATIVE HEARING OFFICER

SECTION

- 12-1101. Municipal administrative hearing officer.
- 12-1102. Communication by administrative hearing officer and parties.
- 12-1103. Appearance by parties and/or counsel.
- 12-1104. Pre-hearing conference and orders.
- 12-1105. Appointment of administrative hearing officer/administrative law judge.
- 12-1106. Training and continuing education.
- 12-1107. Citations for violations; written notice.
- 12-1108. Review of citation; levy of fines.
- 12-1109. Party in default.
- 12-1110. Petitions for intervention.
- 12-1111. Regulating course of proceedings; hearing open to public.
- 12-1112. Evidence and affidavits.
- 12-1113. Rendering of final order.
- 12-1114. Final order effective date.
- 12-1115. Collection of fines, judgments and debts.
- 12-1116. Judicial review of final order.
- 12-1117. Appeal to court of appeals.

12-1101. Municipal administrative hearing officer. (1) In accordance with *Tennessee Code Annotated*, title 6, chapter 54, §§ 1001, *et seq.*, there is hereby created the Niota Municipal Office of Administrative Hearing Officer to hear violations of any of the provisions codified in the Niota Municipal Code relating to building and property maintenance including:

- (a) Building codes adopted by the City;
- (b) All residential codes adopted by the City;
- (c) All plumbing codes adopted by the City;
- (d) All electrical codes adopted by the City;
- (e) All gas codes adopted by the City;
- (f) All mechanical codes adopted by the City;
- (g) All energy codes adopted by the City;
- (h) All property maintenance codes adopted by the City; and
- (i) All ordinances regulating any subject matter commonly

found in the above described codes.

The administrative hearing officer is not authorized to hear violation of codes adopted by the state fire marshal pursuant to *Tennessee Code Annotated*, § 68-120-101(a) enforced by deputy building inspector pursuant to *Tennessee Code Annotated*, § 68-120-101(f).

The utilization of the administrative hearing officer shall be at the discretion of the city manager and/or the city manager's designee and/or the chief building official of the city, and shall be an alternative to the enforcement included in the Niota Municipal Code.

(2) There is hereby created one (1) administrative hearing officer position to be appointed by the city commission pursuant to § 12-1105 below.

(3) The amount of compensation for the administrative hearing officer shall be approved by the mayor and commission.

(4) Clerical and administrative support for the office of administrative hearing officer shall be provided as determined by the mayor and commission.

(5) The administrative hearing officer shall perform all of the duties and abide by all of the requirements provided in *Tennessee Code Annotated*, title 6, chapter 54, §§ 1001, *et seq.* (modified)

12-1102. Communication by administrative hearing officer and parties. (1) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative hearing officer presiding over a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.

(2) Notwithstanding subsection (1) above, an administrative hearing officer may communicate with municipal employees or officials regarding a matter pending before the administrative body or may receive aid from staff assistants, members of the staff of the city attorney or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative hearing officer would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record.

(3) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as an administrative hearing officer without notice and opportunity for all parties to participate in the communication.

(4) If, before serving as an administrative hearing officer in a contested case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) below.

(5) An administrative hearing officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person

from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) business days after notice of the communication.

12-1103. Appearance by parties and/or counsel. (1) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by any provision of law, other representative.

12-1104. Pre-hearing conference and orders. (1) (a) In any action set for hearing, the administrative hearing officer, upon the administrative hearing officer's own motion, or upon motion of one (1) of the parties or such party's qualified representatives, may direct the parties or the attorneys for the parties, or both, to appear before the administrative hearing officer for a conference to consider:

- (i) The simplification of issues;
- (ii) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;
- (iii) The limitation of the number of witnesses; and
- (iv) Such other matters as may aid in the disposition of the action.

(b) The administrative hearing officer shall make an order that recites the action taken at the conference, and the agreements made by the parties as to any of the matters considered, and that limits the issues for hearing to those not disposed of by admissions or agreements of the parties. Such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(2) Upon reasonable notice to all parties, the administrative hearing officer may convene a hearing or convert a pre-hearing conference to a hearing, to be conducted by the administrative hearing officer sitting alone, to consider argument or evidence, or both, on any question of law.

(3) In the discretion of the administrative hearing officer, all or part of the pre-hearing conference may be conducted by telephone, television or other electronic means, if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(4) If a pre-hearing conference is not held, the administrative hearing officer may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.

12-1105. Appointment of administrative hearing officer/administrative law judge. (1) The administrative hearing officer shall be appointed by the mayor and commission for a four (4) year term and serve at the pleasure of the mayor and commission. Such administrative hearing officer may be reappointed.

- (2) An administrative hearing officer shall be one (1) of the following:
- (a) Licensed building inspector;
 - (b) Licensed plumbing inspector;
 - (c) Licensed electrical inspector;
 - (d) Licensed attorney;
 - (e) Licensed architect; or
 - (f) Licensed engineer.

(3) The city may also contract with the administrative procedures division, office of the Tennessee Secretary of State to employ an administrative law judge on a temporary basis to serve as an administrative hearing officer. Such administrative law judge shall not be subject to the requirements of subsections 6-54-1007(a) and (b). (modified)

12-1106. Training and continuing education. (1) Each person appointed to serve as an administrative hearing officer shall, within the six (6) month period immediately following the date of such appointment, participate in a program of training conducted by the University of Tennessee's Municipal Technical Advisory Service, referred to in this part as MTAS. MTAS shall issue a certificate of participation to each person whose attendance is satisfactory. The curricula for the initial training shall be developed by MTAS with input from the administrative procedures division, office of the Tennessee Secretary of State. MTAS shall offer this program of training no less than twice per calendar year.

(2) Each person actively serving as an administrative hearing officer shall complete six (6) hours of continuing education every calendar year. MTAS developed the continuing education curricula and offers that curricula for credit no less than twice per calendar year. The education required by this section shall be in addition to any other continuing education requirements required for other professional licenses held by the individuals licensed under this part. No continuing education hours from one (1) calendar year may be carried over to a subsequent calendar year.

(3) MTAS has the authority to set and enact appropriate fees for the requirements of this section. The city shall bear the cost of the fees for the administrative hearing officer serving the city.

- (4) Costs pursuant to this section shall be offset by fees enacted.

12-1107. Citations for violations; written notice. (1) Upon the issuance of a citation for violation of a municipal ordinance referenced in the city's administrative hearing ordinance, the issuing officer shall provide written notice of:

(a) A short and plain statement of the matters asserted. If the issuing officer is unable to state the matters in detail at the time the citation is served, the initial notice may be limited to a statement of the issues involved and the ordinance violations alleged. Thereafter, upon timely, written application, a more definite and detailed statement shall be furnished ten (10) business days prior to the time set for the hearing;

(b) A short and plain description of the city's administrative hearing process including references to state and local statutory authority;

(c) Contact information for the city's administrative hearing office; and

(d) Time frame in which the hearing officer will review the citation and determine the fine and remedial period, if any.

(2) Citations issued for violations of ordinances referenced in the city's administrative hearing ordinance shall be signed by the alleged violator at the time of issuance. If an alleged violator refuses to sign, the issuing officer shall note the refusal and attest to the alleged violator's receipt of the citation. An alleged violator's signature on a citation is not admission of guilt.

(3) Citations issued upon absentee property owners may be served via certified mail sent to the last known address of the recorded owner of the property.

(4) Citations issued for violations of ordinances referenced in the city's administrative hearing ordinance shall be transmitted to an administrative hearing officer within two (2) business days of issuance.

12-1108. Review of citation; levy of fines. (1) Upon receipt of a citation issued pursuant to § 12-607, an administrative hearing officer shall, within seven (7) business days of receipt, review the appropriateness of an alleged violation. Upon determining that a violation does exist, the hearing officer has the authority to levy a fine upon the alleged violator in accordance with this section. Any fine levied by a hearing officer must be reasonable based upon the totality of the circumstances.

(a) For violations occurring upon residential property, a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars (\$500.00) per violation. For purposes of this section, "residential property" means a single-family dwelling principally used as the property owner's primary residence and the real property upon which it sits.

(b) For violations occurring upon non-residential property, a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars (\$500.00) per violation per day. For purposes of this part, "non-residential property" means all real property, structures, buildings and dwellings that are not residential property.

(2) If a fine is levied pursuant to subsection (1) above, the hearing officer shall set a reasonable period of time to allow the alleged violator to remedy the violation alleged in the citation before the fine is imposed. The remedial period shall be no less than ten (10) nor greater than one hundred twenty (120) calendar days, except where failure to remedy the alleged violation in less than ten (10) calendar days would pose an imminent threat to the health, safety or welfare of persons or property in the adjacent area.

(3) Upon the levy of a fine pursuant to subsection (a), the hearing officer shall within seven (7) business days, provide via certified mail notice to the alleged violator of:

(a) The fine and remedial period established pursuant to subsections (1) and (2) above;

(b) A statement of the time, place, nature of the hearing, and the right to be represented by counsel; and

(c) A statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes and rules involved.

(4) The date of the hearing shall be no less than thirty (30) calendar days following the issuance of the citation. To confirm the hearing, the alleged violator must make a written request for the hearing to the hearing officer within seven (7) business days of receipt of the notice required in subsection (3).

(5) If an alleged violator demonstrates to the issuing officer's satisfaction that the allegations contained in the citation have been remedied to the issuing officer's satisfaction, the fine levied pursuant to subsection (1) shall not be imposed or if already imposed cease; and the hearing date, if the hearing has not yet occurred, shall be cancelled.

12-1109. Party in default. (1) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative hearing officer may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(2) If the proceedings are conducted without the participation of the party in default, the administrative hearing officer shall include in the final order a written notice of default and a written statement of the grounds for the default.

12-1110. Petitions for intervention. (1) The administrative hearing officer shall grant one (1) or more petitions for intervention if:

(a) The petition is submitted in writing to the administrative hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) business days before the hearing;

(b) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The administrative hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(2) If a petitioner qualifies for intervention, the administrative hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's participation so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two (2) or more intervenors to combine their participation in the proceedings.

(3) The administrative hearing officer, at least twenty-four (24) hours before the hearing, shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative hearing officer may modify the order at any time, stating the reasons for the modification. The administrative hearing officer shall promptly give notice of an order granting, denying or modifying intervention to the petitioner for intervention and to all parties.

12-1111. Regulating course of proceedings; hearing open to public.

(1) The administrative hearing officer shall regulate the course of the proceedings, in conformity with the pre-hearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the administrative hearing officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the pre-hearing order.

(3) In the discretion of the administrative hearing officer and by agreement of the parties, all or part of the hearing may be conducted by telephone, television or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.

(4) The hearing shall be open to public observation pursuant to *Tennessee Code Annotated*, title 8, chapter 44, unless otherwise provided by state or federal law. To the extent that a hearing is conducted by telephone, television or other electronic means, the availability of public observation shall

be satisfied by giving members of the public an opportunity, at reasonable times, to hear the tape recording and to inspect any transcript produced, if any.

12-1112. Evidence and affidavits. (1) In administrative hearings:

(a) The administrative hearing officer shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The administrative hearing officer shall give effect to the rules of privilege recognized by law and to statutes protecting the confidentiality of certain records, and shall exclude evidence which in his or her judgment is irrelevant, immaterial or unduly repetitious.

(b) At any time not less than ten (10) business days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit such party proposes to introduce in evidence, together with a notice in the form provided in subsection (2). Unless the opposing party, within seven (7) business days after delivery, delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made as provided in this subsection (1)(b), the affidavit shall not be admitted into evidence. "Delivery," for purposes of this section, means actual receipt.

(c) The administrative hearing officer may admit affidavits not submitted in accordance with this section where necessary to prevent injustice.

(d) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the municipality. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available.

(e) (i) Official notice may be taken of:

(A) Any fact that could be judicially noticed in the courts of this state;

(B) The record of other proceedings before the agency; or

(C) Technical or scientific matters within the administrative hearing officer's specialized knowledge.

(ii) Parties must be notified before or during the hearing, or before the issuance of any final order that is based in whole or in part on facts or material notice, of the specific facts or material noticed and the source thereof, including any staff memoranda and

data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

(2) The notice referred to in subdivision (1)(b) shall contain the following information and be substantially in the following form:

The accompanying affidavit of _____ (here insert name of affiant) will be introduced as evidence at the hearing in _____ (here insert title of proceeding) _____ (here insert name of affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify _____ (here insert name of the proponent or the proponent's attorney) at _____ (here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to _____ (here insert name of proponent or the proponents attorney) on or before _____ (here insert a date seven (7) business days after the date of mailing or delivering the affidavit to the opposing party).

12-1113. Rendering of final order. (1) An administrative hearing officer shall render a final order in all cases brought before his or her body.

(2) A final order shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The final order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.

(3) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The administrative hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

(4) If an individual serving or designated to serve as an administrative hearing officer becomes unavailable, for any reason, before rendition of the final order, a qualified substitute shall be appointed. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

(5) The administrative hearing officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(6) A final order rendered pursuant to subsection (1) above shall be rendered in writing within seven (7) business days after conclusion of the hearing or after submission of proposed findings unless such period is waived or extended with the written consent of all parties or for good cause shown.

(7) The administrative hearing officer shall cause copies of the final order under subsection (1) to be delivered to each party.

12-1114. Final order effective date. (1) All final orders shall state when the order is entered and effective.

(2) A party may not be required to comply with a final order unless the final order has been mailed to the last known address of the party or unless the party has actual knowledge of the final order.

12-1115. Collection of fines, judgments and debts. The city may collect a fine levied pursuant to this section by any legal means available to a municipality to collect any other fine, judgment or debt.

12-1116. Judicial review of final order. (1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review.

(2) Proceedings for judicial review of a final order are instituted by filing a petition for review in the chancery court in the county where the municipality lies. Such petition must be filed within sixty (60) calendar days after the entry of the final order that is the subject of the review.

(3) The filing of the petition for review does not itself stay enforcement of the final order. The reviewing court may order a stay on appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten (10) business days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied.

(4) Within forty-five (45) calendar days after service of the petition, or within further time allowed by the court, the administrative hearing officer shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties of the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the administrative proceeding, the court may order that the additional evidence be taken before the administrative hearing officer upon conditions determined by the court. The administrative hearing officer may modify its findings and decision by reason of the additional evidence and

shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(6) The procedure ordinarily followed in the reviewing court will be followed in the review of contested cases decided by the administrative hearing officer, except as otherwise provided in this chapter. The administrative hearing officer that issued the decision to be reviewed is not required to file a responsive pleading.

(7) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the administrative hearing officer, not shown in the record, proof thereon may be taken in the court.

(8) The court may affirm the decision of the administrative hearing officer or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the administrative hearing officer;

(c) Made upon unlawful procedure;

(d) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(e) Unsupported by evidence that is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the administrative hearing officer as to the weight of the evidence on questions of fact.

(9) No administrative hearing decision pursuant to a hearing shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

(10) The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record.

12-1117. Appeal to court of appeals. (1) An aggrieved party may obtain a review of any final judgment of the chancery court under this chapter by appeal to the court of appeals of Tennessee.

(2) The record certified to the chancery court and the record in the chancery court shall constitute the record in an appeal. Evidence taken in court pursuant to *Tennessee Code Annotated*, title 24 shall become a part of the record.

(3) The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure.