



## Federal and State Pre-emption

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal 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 municipal 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 MTAS website material.

Sincerely,

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## Federal and State Pre-emption

**Reference Number:** MTAS-67

### ***Mobile Homes***

The state establishes standards for electrical, gas, and oil systems in mobile homes and exempts state-approved systems from compliance with conflicting or more restrictive local ordinances. T.C.A. § 68-102-147(h).

State statutes pre-empt local authority in some building code matters. For example, mobile home anchoring regulations must comply with the Tennessee Manufactured Home Installation Act. T.C.A. §§ 68-126-401–412.

Federal statutes also pre-empt local authority regarding manufactured home construction.

42 U.S.C. § 5403(d) sets manufactured home construction and safety standards. It provides:

"Whenever a federal manufactured home construction and safety standard established under this chapter is in effect, no state or political subdivision of a state shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the federal manufactured home construction and safety standard."

The federal manufactured home construction and safety standards are found at 24 C.F.R. § 3280.

### ***Condominium Ownership***

A building code or land use ordinance may not prohibit the condominium form of ownership or impose any requirement on a condominium it "would" not impose on an identical development under a different form of ownership. T.C.A. § 66-27-206.

### ***Notification that Property Is Downstream of a Dam***

T.C.A. § 69-11-127 requires local governments that issue building permits to inform an applicant when the proposed construction or alteration is located downstream of a dam and would be affected by failure of the dam. The Department of Environment and Conservation must provide each county mayor with an inventory of dams in the county, and the county mayor must provide it to municipalities that issue building permits. The executive officer of the municipality must provide it to the building official.

## Statewide Building Standards

**Reference Number:** MTAS-291

T.C.A. §§ 68-120-101, *et seq.*, authorize the state fire marshal to adopt minimum statewide building construction safety standards and to adopt rules and regulations pertinent to those standards. Under rules of the Tennessee Department of Commerce and Insurance, Division of Fire Prevention, Chapter 0780-02-02.01, the state fire marshal has adopted:

- *The International Building Code, 2012 edition*, published by the International Code Council Inc. (ICC), except for Chapter 11 (accessibility) and Chapter 34 (accessibility for existing buildings);
- *The International Fuel Gas Code, 2012 edition*;
- *The International Mechanical Code, 2012 edition*;
- *The International Plumbing Code, 2012 edition*;
- *The International Property Maintenance Code, 2012 edition*;
- *The International Fire Code, 2012 edition*; and
- *The International Energy Conservation Code, 2012 edition*.

In addition, *The Life Safety Code (NFPA No. 101)*, 2012 edition, published by the National Fire Protection Association (NFPA), has been adopted for state buildings, educational occupancies, and any other occupancy requiring an inspection by the state fire marshal for initial licensure. Emergency rules

filed June 1, 2018 specify that for classrooms, NFPA 101 Life Safety Code, 2018 edition "Classroom Door Locking to Prevent Unwanted Entry" provisions do not apply to those educational facilities.

The state rules do not adopt any provision of those publications that establishes:

- An optional or recommended, rather than mandatory, standard or practice; or
- Any agency, procedure, fees, or penalties for administration or enforcement purposes inconsistent with Division of Fire Prevention rules.

The minimum standards adopted by the state fire marshal do not apply to renovations of existing one-family and two-family dwellings, non-residential farm buildings, temporary buildings used exclusively for construction purposes, manufactured homes and recreational vehicles, and buildings or facilities reviewed and licensed by the board for licensing health care facilities.

The state fire marshal is prohibited from requiring mandatory sprinkler requirements for one-family and two-family dwellings. However, a municipality may enact such a requirement as discussed in the section below.

A municipality may also choose to exempt one-family and two-family dwellings from statewide building construction standards. To do so requires a two-thirds affirmative vote of the governing body. The resolution expires one hundred eighty (180) days following the date of next general municipal election, or sooner as may be set forth in the adopting resolution. The exemption can be continued with the passage of a new resolution by the governing body. The state fire marshal shall be notified whenever action is taken to exempt or repeal an exempting action. The notification shall include a certified copy of the resolution opting out of the provisions, the date of the next election for the legislative body, and the name and mailing address of the person responsible by law for recordkeeping.

The statewide building construction standards do not apply to any building within a municipality (other than state buildings, educational occupancies, or any other occupancy requiring an inspection by the state fire marshal for initial licensure) for which certification has been made in writing by the municipality to the state fire marshal that the municipality has chosen to adopt and enforce building and fire safety codes for either (i) all buildings, (ii) all buildings other than one-family and two-family dwellings, or (iii) one-family and two-family dwellings only, and:

- It has adopted the *ICC Residential Code* for one-family and two-family construction;
- For other than one-family and two-family dwelling construction, it has adopted the *ICC Building Code* and either (a) the *ICC Fire Code* or (b) the *NFPA International Fire Code*;
- It is adequately enforcing its own code and is performing any reviews of construction plans and specifications required by the state fire marshal (the state fire marshal must audit the records of each local government that chooses to enforce its own code at least once every three years to ensure that it is adequately performing its enforcement functions); and
- Amended versions of the codes adopted by the municipality must afford a reasonable degree of safety to life and property.

If a municipality chooses to adopt and enforce codes for only (i) one-family and two-family dwellings or for (ii) all buildings other than one-family and two-family dwellings, then in that event the state fire marshal shall enforce the statewide codes for those buildings for which the municipality has chosen not to adopt and enforce codes.

Irrespective of other authorities, the statewide building codes shall apply in a city if:

- The local government's building construction safety code publications are not current within seven (7) years of the latest edition, unless otherwise approved by the state fire marshal; or
- After written notice and hearing, the state fire marshal finds that the local government is not adequately performing its enforcement functions.

A Tennessee Attorney General opinion dated March 11, 1985, opines that a municipality may not require a county to obtain a building permit for construction of a county building used in the county's governmental capacity when that requirement is not authorized by statute. The law is ambiguous with respect to such a requirement. However, it does appear to be the intent of T.C.A. §§ 68-120-101, *et seq.*, that municipal building and fire codes that meet the requirements of that statute and of Rule 0780-02-02 apply to municipal, county, state, and private buildings. If for some reason the municipal building and fire codes did not apply, presumably, municipal fire prevention officials in their capacities as assistants to the state fire marshal under T.C.A. § 68-120-108 could enforce against municipal,

county, state, and private buildings the statewide building construction safety standards adopted by the state fire marshal.

**Adoption of sprinkler requirements**

An ordinance mandating sprinklers in one-family and two-family residential dwellings and/or townhouses requires a two-thirds affirmative vote of the governing body. Mandatory sprinkler requirements shall be voted on separate from any other ordinance addressing building construction safety standards. Where ordinance passage requires two readings the ordinance must be read in two specially-called meetings held on different days at least two weeks apart. Where ordinance passages requires three readings the final two readings must occur on two different days at least two weeks apart. The mandatory sprinkler requirement may be repealed in the same manner required it its adoption, except for sprinkler requirements adopted prior to April 27, 2012, which can be repealed in the customary manner. A sprinkler mandate shall not apply to manufactured homes. T.C.A. § 68-120-101.

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**Source URL (retrieved on 07/05/2020 - 4:21am):** <http://www.mtas.tennessee.edu/reference/federal-and-state-pre-emption>

