



## Amendments to Building Codes

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Dear Reader:

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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.

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## Amendments to Building Codes

**Reference Number:** MTAS-1095

### ***Building Codes Adopted by Reference***

Amendments to building codes published by original publisher may be adopted either by ordinance.<sup>[7]</sup> or by administrative regulations.<sup>[8]</sup> Regardless of which method is used to adopt published amendments to codes, the governing body must take affirmative action to either accept or reject each specific amendment to a particular code.<sup>[9]</sup> The statute does not provide for automatic adoption of future published amendments, nor will an ordinance adopted to incorporate "all future amendments" comply with the statute.<sup>[10]</sup> For cities that enforce their own local building construction safety standards under T.C.A. Title 68, Chapter 120, building codes adopted by reference must be current within seven years of the date of the latest editions.<sup>[11]</sup> The local standards must be at least as stringent as those adopted by the state fire marshal, or the fire marshal's standards apply to the city.<sup>[12]</sup> The local standards may not conflict with any provision of T.C.A. Title 68, Chapter 120.<sup>[13]</sup>

[7] T.C.A. § 6-54-503.

[8] T.C.A. § 6-54-502(c) - (e).

[9] T.C.A. § 6-54-502(b), (d).

[10] See T.C.A. § 6-54-502(b).

[11] T.C.A. § 68-120-101 (b)(5)(A).

[12] T.C.A. § 68-120-106(a) (Supp. 2003).

[13] *Id.*

## Rejecting Specific Amendments

**Reference Number:** MTAS-1772

If a city decides not to adopt a certain published amendment, and amendments to building codes are not adopted administratively by the building official, it must reject the amendment by at least a two-thirds vote of the total membership of the governing body.<sup>[14]</sup> This must be done every time a new amendment is published to the code. Each amendment rejected must be identified by "date and source."<sup>[15]</sup> The ICC and other organizations, when publishing building codes or amendments, specify the date of the code or amendment by year, e.g. "2012 edition with 2014 revisions." The "source" is the particular code being adopted.

The statute does not specify that rejection of amendments must be by written instrument. However, a written resolution is an effective way to keep a record of the votes on each amendment considered and what action was taken on each. See Sample 3, "Resolution rejecting specific amendments to building codes." [1] If the rejection is not by written instrument, the meeting minutes should contain an accurate reference to the specific amendment considered and either a roll call vote or a notation that the vote to reject was effected by at least a two-thirds majority of the total membership of the board.

[14] T.C.A. § 6-54-502(b).

[15] *Id.*

## Adopting Amendments by Ordinance

**Reference Number:** MTAS-1773

If a city decides to adopt a specific amendment, T.C.A. provides two alternate methods. The first method is straightforward. The governing body of the city passes an ordinance adopting the published amendments by reference.<sup>[16]</sup> As with complete building codes adopted by reference, amendments to building codes must be on file in the recorder's office at least 15 days before the ordinance incorporating them by reference is adopted.<sup>[17]</sup> If the ordinance adopting the building code is in the city's municipal code, the ordinance adopting the amendment should be written to amend the municipal code section and not the original ordinance. See Sample 4, "Ordinance incorporating amendments to building codes—amending a municipal code." [2] If the ordinance adopting the building code is not in a municipal code, the ordinance should be written to amend the ordinance that adopted the building code. See Sample 5, "Ordinance

incorporating amendments to building codes—amending an existing ordinance." [3]

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[16] T.C.A. § 6-54-503.

[17] T.C.A. § 6-54-503(b).

## Adopting Amendments by Administrative Regulations

**Reference Number:** MTAS-1774

The second method of adopting published amendments to building codes by reference is a bit more complicated. It is not clearly set forth in the statutes but is outlined in T.C.A. § 6-54-502(c)–(e). See the step-by-step guide [4] for a simplified version of this method. So that anyone reading the original ordinance adopting the building code by reference will know how to locate amendments to the building code, the intent to have the municipal code official adopt amendments administratively should be set forth in that ordinance. See Sample 2, "Adopting building codes by reference with intent to adopt amendments administratively." [5]

For cities with municipal code sections adopting building codes by reference, a footnote should be added referring to administrative regulations that adopt amendments. The footnote should be updated each time the building official adopts new amendments and should identify by date and source the amendments adopted. See Sample 6, "Municipal Code chapter adopting the International Building Code with intent to adopt amendments administratively, and footnote to administrative regulations." [6]

### **General Information**

With this method, the "appropriate municipal code official" must "adopt administrative regulations" that incorporate by reference the published amendments "properly identified as to date and source." [18] "Appropriate municipal code official" is not defined. However, the building inspector or other official designated by the city's governing body to administer and enforce the building codes adopted by reference is the recommended choice. In the following discussions, this individual will be referred to as the "building official." For cities enforcing their own building construction safety standards, the building official must be certified by the state fire marshal. [19]

The statute does not provide the procedure the municipal code official must follow to "adopt administrative regulations," but the official should not write the regulations to amend the original ordinance adopting the building code by reference. A city's governing body may delegate administrative functions to subordinate officials. [20] However, an ordinance must be amended by an act of "equal dignity," i.e., another ordinance. [21] It is a legislative act, [22] and legislative acts may not be delegated. [23] So that the regulations are easily accessible to interested persons, the official should put them in a binder with identifying labels. See Sample 7, "Administrative regulations to adopt amendments to building codes." [7]

### **"Publication" and "Filing" Requirements**

The building official must make the regulations available to the governing body (the "publication" requirement), [24] and to the general public (the "filing" requirement), [25] before they can take effect under the administrative procedures. The next few paragraphs examine each of these requirements.

First, the "publication" requirement.— T.C.A. § 6-54-502(d) – provides that the regulations "shall become effective upon the expiration of 90 calendar days or after the second official meeting of the municipal governing body following the publication of the regulations, whichever is later, unless within that period of time a resolution disapproving such administrative regulation has been adopted by the municipal governing body" (the "90-day period").

The 90-day period begins upon the "publication" of the administrative regulations. [26] What constitutes "publication" of the regulations is not defined in the statute. However, T.C.A. § 6-54-501(4) defines "published" as "printed, lithographed, multigraphed, or otherwise reproduced." In general, "publication" consists not only of printing or reproducing something, but also of distributing it to either the public or a certain group. [27] The date the building official presents the administrative regulations to the city's governing body would appear to be consistent with this definition. The 90-day period ends after the second official meeting of the governing body or 90 days after publication, whichever is later. [28] Its purpose is to give the governing body time to consider the amendments, decide whether or not to approve them, and, if not approving them, time to pass a resolution to disapprove them.

The final administrative procedure to discuss is the "filing" requirement. T.C.A. § 6-54-502(e) provides that the "filing requirement of subsection (a) shall be complied with in adopting amendments to building codes by administrative regulation." The "subsection (a)" referred to provides that any code adopted by reference must be "filed with the clerk of such municipality for a period of fifteen (15) days prior to adoption of the ordinance which incorporates such code." [29] The "ordinance" referred to in the statute is not required when amendments are adopted administratively by the building official. However, the purpose in requiring the building code or amendment to be on file in the recorder's office is clearly stated: to make it "available for public use, inspection, and examination." [30] This requirement is met as long as the administrative regulations are on file for 15 days in the city recorder's office for public inspection before they are

adopted.<sup>[31]</sup>

While the statute does not specify when the administrative regulations are considered "adopted," it does provide that the regulations become effective upon the expiration of the 90-day period.<sup>[32]</sup> The expiration of the 90-day period is the final step in adopting the administrative regulations.<sup>[33]</sup> It is the date of the second meeting of the governing body after publication of the regulations or after 90 days, whichever is later, and should be considered the date the regulations are adopted. So that a clear record is kept of the administrative procedures, the adoption date should appear on the regulations. See Sample 7, "Administrative regulations to adopt amendments to building codes." [7] Since the 15-day filing period requirement is in place to give the public a chance to look at the regulations prior to their adoption,<sup>[34]</sup> they must be completed before the 90-day period ends. If the administrative regulations are on file in the recorder's office at least 15 days before the 90-day period expires, the requirement will be met.

[18] T.C.A. § 6-54-502(c).

[19] T.C.A. § 68-120-113(a)(1).

[20] *City of Rockwood v. Cincinnati, N.O. & T.P. Ry. Co.*, 22 S.W.2d 237, 160 Tenn. 31 (1929).

[21] *City of Bluff City v. Morrell*, 764 S.W.2d 200, 202 (Tenn. 1988).

[22] *City of Cleveland v. Bradley County*, 1999 WL 281086 (Tenn. Ct. App. 1999) (unpublished opinion), at 4, *J.T. McCallen v. City of Memphis*, 786 S.W.2d 633, 639 (Tenn. 1990),

[23] *City of Rockwood*, 22 S.W.2d at 240.

[24] T.C.A. § 6-54-502(d).

[25] T.C.A. § 6-54-502(e).

[26] T.C.A. § 6-54-502(d).

[27] *Black's Law Dictionary* 1227-1228 (6th ed. 1990).

[28] T.C.A. § 6-54-502(d).

[29] T.C.A. § 6-54-502(a).

[30] *Id.*

[31] T.C.A. § 6-54-502(e).

[32] T.C.A. § 6-54-502(d).

[33] *Id.*

[34] T.C.A. § 6-54-502(a).

#### Links:

[1] <https://www.mtas.tennessee.edu/reference/sample-resolution-rejecting-amendments>

[2] <https://www.mtas.tennessee.edu/reference/sample-ordinance-incorporating-amendments-municipal-code>

[3] <https://www.mtas.tennessee.edu/reference/sample-ordinance-incorporating-amendments-ordinance>

[4] <https://www.mtas.tennessee.edu/reference/guide-adopting-building-codes>

[5] <https://www.mtas.tennessee.edu/reference/sample-ordinance-adopt-amendments-administratively>

[6] <https://www.mtas.tennessee.edu/reference/sample-municipal-code-chapter-adopting-ibc>

[7] <https://www.mtas.tennessee.edu/reference/sample-administrative-regulations-adopt-amendments>

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