



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

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Energy Code Adoption

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://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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Energy Code Adoption

Reference Number: MTAS-1121

In the 2010 Legislative Session, the General Assembly passed Public Chapter No. 529, the Tennessee Clean Energy Future Act of 2009. Central to the bill, which amended T.C.A. § 68-120-101, are authorization for adoption of energy efficiency standards and implementation of the broadened statewide building standards that took effect July 1, 2010. Currently, state requirements apply only to municipal, county, state, and certain private buildings, newly constructed one- and two-family dwellings, and include regulation of various structural and safety factors.

Applicability of the standards, however, is not absolute as this legislation effectively created three classes of code enforcement across the state:

1. **Exempt** – Cities where local building codes and local code enforcement meet state minimum standards. These cities will continue to adopt and enforce their own building codes.
2. **Nonexempt state enforcement** – Cities where local residential building codes and local residential code enforcement do not meet minimum state standards. Here, at the request of the city or upon the department of commerce and insurance’s own initiative, the state will enforce state-adopted building codes.
3. **Opt-out** – Cities that have passed a resolution exempting their jurisdiction from the applicability of minimum state standards for one and two-family dwellings.

Cities can avoid state enforcement by adopting and enforcing codes that meet minimum state standards. However, where cities do not meet these state minimums, the state standards will apply as will state enforcement. Cities also have limited authority to opt out of the application of the state standards in their jurisdictions.

Energy Code: Exempt Cities

Reference Number: MTAS-1122

The intent of the legislation, and the hope of the state entities charged with enforcing it, is to encourage as many cities as possible to become exempt. Obtaining exempt status not only provides a city and its residents with the highest level of protection and safety in new home construction, it also allows a city to retain local control of its own development.

The designation “exempt” was already defined prior to passage of this legislation. Under that previous definition an exempt city was one that had adopted the building and fire codes required by the state, was adequately enforcing those codes, and performing reviews of construction plans and specifications. Under this new regulatory scheme, however, the requirements for obtaining exempt status, and thus the definition of “exempt,” have changed. For purposes of this writing, “exempt” as defined by the new legislation is assumed.

The legislation requires a city to adopt and enforce minimum building codes to become exempt. The specific prerequisites for exemption are set out in the state fire marshal’s rules and regulations; however, the general requirements are as follows:

State enforcement remains limited to state buildings, educational occupancies and any other occupancy requiring inspection for initial licensure if the local government has chosen to adopt and enforce building codes for construction of all buildings, for construction of all buildings other than one- and two-family dwellings, or for one- and two-family dwellings only; and:

1. For one- and two-family dwellings, it has adopted the International Residential Code;
2. For construction other than one- and two-family dwellings it has adopted a building construction safety code consisting of the International Building Code and either the International Fire Code or the Uniform Fire Code, if adopted on or after July 1, 2006; and

3. The city is adequately enforcing its locally adopted building code and performing reviews of construction plans and specifications and inspections required by the state fire marshal. Requirements vary depending on the type of construction.

Furthermore, an exempt city's building code edition for one- and two-family dwellings must be current within seven years of publication unless otherwise approved by the state fire marshal. If your city meets and adequately enforces the aforementioned standards then you will retain local control and be exempt from statewide codes and enforcement.

According to these requirements, a city may choose to adopt and enforce codes for specific buildings, and state enforcement will apply where the city is not regulating and enforcing. Hence, within the exempt city classification, there will be a further breakdown of groupings. They are:

1. Cities that adopt and enforce codes for buildings other than one- and two-family dwellings. Here, the state will regulate residential construction with enforcement by deputy building inspectors.
2. Cities that adopt and enforce codes for one- and two-family dwellings only. Here, the state will regulate buildings other than one- and two-family dwellings.
3. Cities that adopt and enforce codes for both one- and two-family dwellings and other buildings. Here, the state will not regulate within the city's jurisdiction except state buildings, educational facilities, etc.

Energy Code: Nonexempt Cities

Reference Number: MTAS-1123

If, however, a city cannot or chooses not to adopt and enforce the minimum standards, the state will enforce the applicable statewide codes in the city. The commissioner of commerce and insurance is authorized to contract with local governments to use their employees for inspections of one- and two-family residences. These contracts can allow inspectors to charge a fee as set out by the state fire marshal's office. These are the state regulations applicable to such inspections, containing the relevant fee schedule:

https://www.tn.gov/content/dam/tn/commerce/documents/fire_prevention/pos... [1]

Deputy building inspectors must be state certified as a:

1. Licensed building inspector;
2. Licensed plumbing inspector; or
3. Licensed mechanical inspector.

Energy Code: Opt-Out Cities

Reference Number: MTAS-1124

Whether or not it is enforcing a locally adopted code or has no code at all, a city can completely avoid state regulation of one- and two-family dwellings in its jurisdiction by opting out of the statewide standards. This can be accomplished by a specific and recurring resolution process. This requires a city to pass a resolution by a two-thirds vote of the governing body exempting one- and two-family dwellings in its jurisdiction from the applicability of the statewide standards and to forward the resolution to the state fire marshal. The resolution, however, expires 180 days following the date of the next election. Hence, each new governing body must pass a subsequent resolution to continue avoiding applicability of the state standards.

Tennessee Complying with Energy Code

Reference Number: MTAS-1126

The Department of Commerce and Insurance is complying with the state law. A survey of local governments relating to the enforcement of one- and two-family residential codes shows that many local governments have adopted versions of a residential code, and that some cities have decided, either consciously or unconsciously, not to adopt or enforce codes at the local level. Failing to adopt and enforce codes is a disservice to the community.

Financial assistance has been available in the past from the state. The Tennessee Valley Authority (TVA) is another important partner in the energy code process. TVA supports energy codes and is a reliable source of information about effective enforcement. This link provides information from TVA on ways to make homes more energy efficient and on rebate programs: <https://www.energyright.com/> [2]

Links:

- [1] https://www.tn.gov/content/dam/tn/commerce/documents/fire_prevention/posts/0780-02-23.20170202.pdf
- [2] <https://www.energyright.com/>

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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