

## Zoning

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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.

Sincerely,

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## Zoning

**Reference Number:** MTAS-228

A municipality's "chief legislative body" is empowered to adopt and amend a zoning ordinance. The adoption process requires a public hearing preceded by a newspaper notice of at least 15 days. T.C.A. § 13-7-203.

Pursuant to T.C.A. §13-7-201, the zoning ordinance may "regulate the location, height, bulk, number of stories, and size of buildings and other structures; the percentage of the lot that may be occupied; the sizes of yards, courts, and other open spaces; the density of population; and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, and other purposes ..." and establish special districts or zones "subject to seasonal or periodic flooding ... and such regulations may be applied therein as will minimize danger to life and property." Zoning regulations may provide for the transfer of development rights under procedures and restrictions set out in T.C.A. § 13-7-201(a)(2).

The municipal planning commission is responsible for certifying to the governing body a zoning plan, the text of a zoning ordinance, and zoning maps. Any change in the ordinance, including the zoning map, must be referred to the planning commission for approval. The planning commission's disapproval may be overridden by a majority vote of the entire legislative body. The same procedure applies to any zoning ordinance text amendment. T.C.A. §§ 13-7-201–204.

The chief legislative body may create a board of zoning appeals of three, five, seven, or nine members; or it may designate the municipal planning commission to act in this capacity. The board is authorized to grant exceptions to the zoning ordinance, in such matters set forth in the ordinance, that are "in harmony with [the] general purpose and intent" of the zoning ordinance and "to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions as they arise in the administration of the zoning regulations." Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any grant or refusal of a building permit or other act or decision of the building commissioner of the municipality or other administrative official based in whole or part upon the provisions of this ordinance. T.C.A. §§ 13-7-205 - 207.

These general law provisions supplement, but do not supplant or modify, any private acts for a particular city. General law provisions regarding zoning powers and procedures apply to the extent that they are not in conflict with such private acts. The most restrictive regulations control any conflict with respect to width or size of yards, courts, or other open spaces; height and number of stories or buildings; and density. T.C.A. § 13-7-209.

Under T.C.A. § 68-221-415, advanced treatment systems for the treatment and disposal of sewage under a pilot project study conducted by the state are subject to zoning requirements established by the municipality for the parcel of property.

### ***Condominium Ownership***

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

### ***Zoning and Subdivision Regulation Outside City Limits***

If a municipal planning commission has been designated as a regional planning commission, the city may exercise zoning powers beyond its boundaries up to and including its growth boundary if the county is not exercising such zoning power. The state code specifies procedural requirements for public hearings and notice to the county of its intent to exercise zoning authority outside its corporate limits. City zoning is nullified when the county exercises its zoning powers. T.C.A. §§ 13-7-302–306.

Several sections of Public Acts 1998, Chapter 1101, affect municipal zoning and subdivision authority outside municipal limits. T.C.A. § 13-3-102 and T.C.A. § 13-3-401(2), which are part of the statute that governs the authority of regional planning commissions, when read together appear to limit the jurisdiction of regional planning commissions outside municipal limits to the territory within the urban growth boundary (when one has been established by adoption of the growth plan). Another is codified in T.C.A. § 6-58-106(d), and provides that

Notwithstanding the extraterritorial planning jurisdiction authorized for municipal planning commissions designated as regional planning commissions in Title 13, Chapter 3, nothing in this chapter shall be construed to authorize municipal planning commission jurisdiction beyond an urban growth boundary; provided, that in a county without county zoning, a municipality may provide extraterritorial zoning and subdivision regulation beyond its corporate limits with the approval of the county legislative body.

Disagreement exists on the effect the last clause in T.C.A. § 6-58-106(d) has on the authority of municipal planning commissions designated as regional planning commissions to adopt zoning and subdivision regulations outside their municipal limits but within the urban growth boundary, absent the approval of the county legislative body.

### ***Prohibition of Rent Control and Long-term Affordable or Workforce Housing***

Rent control - A local government is prohibited from enacting or enforcing any ordinance or resolution that has "the effect of controlling the amount of rent charged for leasing private residential or commercial property." T.C.A. § 66-35-102(a).

Long-term affordable or workforce housing - "A local governmental unit shall not enact, maintain, or enforce any zoning regulation, requirement, or condition of development imposed by land use or zoning ordinances, resolutions, or regulations or pursuant to any special permit, special exception, or subdivision plan that requires the direct or indirect allocation of a percentage of existing or newly constructed private residential or commercial rental units for long-term retention as affordable or workforce housing." However, a local government is not precluded from creating or implementing "an incentive-based program designed to increase the construction and rehabilitation of moderate or lower-cost private residential or commercial rental units." T.C.A. § 66-35-102(b) and (c).

### ***Temporary Family Healthcare Structure.***

A zoning ordinance may consider a temporary family healthcare structure as a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings when the structures are being used by a caregiver in providing care for a mentally or physically impaired person and the structure is on property owned or occupied by the caregiver and his/her residence. A temporary family healthcare structure is defined as a "transportable healthcare environment that is specifically designed with environmental controls, biometric and other remote monitoring technology, sensors, and communication systems to support extended home-based medical care, rehabilitation, and the provision of home- and community-based support and assistance for an older adult or person with a disability on the property where family members or unpaid caregivers who participate in the person's care reside." The structure is (1) primarily assembled as a location other than the site of installation; (2) is limited to one occupant who shall be the older adult or person with a disability; (3) meets the accessibility guidelines of the federal Americans with Disabilities Act; (4) has no more than 500 gross square feet; and (5) complies with applicable provisions of title 68, chapter 120, part 1. The placement of a temporary family healthcare structure on a permanent foundation is neither required or permitted. T.C.A. § 13-7-501.

All temporary family healthcare structures must comply with all requirements for accessory dwelling structures of this type and all setback requirements that apply to the primary structure. Only one structure may be placed on a parcel. The structure must also comply with any applicable requirements of the department of health and any local codes and ordinances related to connecting to any water, sewer and electric utilities serving the the primary residence on the property. T.C.A. §§ 13-7-502, 503.

A permit to install a temporary family healthcare structure must be obtained from the local government and a fee of no more than \$100 may be charged. The permit cannot be withheld if the applicant provides sufficient proof of compliance with the act. Ongoing proof of compliance can be required by the local government on an annual basis as long as the structure remains on the property and may involve the inspection of the structure at various times convenience to the caregiver. T.C.A. § 13-7-502. The structure must be removed within 30 days from which the mentally or physically impaired person is no longer receiving or is no longer in need of assistance. T.C.A. § 13-7-505.

## Limits on Zoning Authority

**Reference Number:**

MTAS-229

**Group Homes for Handicapped**

T.C.A. §§ 13-24-101, *et seq.*, takes precedence over any provision in any zoning law or ordinance to the contrary. It provides that a home for up to eight persons with disabilities, and three additional people as support staff or guardians, may be maintained in any area zoned for single family residence use. Such homes "operated on a commercial basis" are excluded. A "person with a disability" does not include persons who have a mental illness and, because of such mental illness, pose a likelihood of serious harm, or who have been convicted of serious criminal conduct related to such mental illness.

**Factory-constructed Homes**

A dwelling may not be excluded from a residential zone solely because it was partially or completely constructed in a manufacturing facility. This provision does not apply to "factory-manufactured mobile homes constructed as single, self-contained units and mounted on a single chassis" and as further defined in T.C.A. § 68-126-202. T.C.A. § 13-24-201.

**Telephone Facilities**

T.C.A. §§ 13-24-301 thru 303 states:

No municipal, county, or regional planning commission or any municipal or county legislative body shall by ordinance or otherwise exclude the location or relocation of any facility used to provide telephone or telegraph services to the public .... Such facilities shall include those essential to the provision of telephone and telegraph services, such as central office exchanges and microwave towers that require a specific location in order to provide the most efficient service to the public. ... The exclusion of location from local regulation shall not preclude the exercise of reasonable municipal and county police powers including but not limited to permit requirements, landscaping, off-street parking, or setback lines as an exercise of police powers.

In addition, a municipality "that has adopted planning and zoning regulations may plan for and regulate the siting of wireless telecommunications support structures in accordance with locally adopted planning or zoning regulations." T.C.A. § 13-24-304.

SEE wireless cell towers below.

**Feedlots, Dairy Farms, and Egg Production Houses**

T.C.A. § 44-18-104(c)(4) exempts feedlots, dairy farms, and egg production houses from zoning restrictions or other regulations that take effect after they commenced operations and prior to their being annexed by a city.

**Historic Zoning**

A county or municipality may create a special historic zoning commission of five to nine members to have jurisdiction over historic sites and buildings. The state code also provides a mechanism for creating a regional historic zoning commission. T.C.A. §§ 13-7-401–410. As part of their historic zoning regulations, municipalities may enact ordinances that prohibit a property owner from allowing a building within a historic zone to deteriorate to the extent that it suffers "demolition by neglect." T.C.A. § 13-7-407.

**Conservation Easements**

Cities may designate and purchase conservation easements over property listed on the National Register of Historic Places or the Tennessee Register. T.C.A. § 66-9-305.

**Sport Shooting Ranges**

The right to operate a sport shooting range may not be terminated or restricted because of changing use of adjacent or surrounding properties when the range was issued permission to operate by an entity having zoning authority. T.C.A. § 39-17-316.

**Continuation of Non-conforming Business Uses**

T.C.A. § 13-7-208(b)-(d) allows the continuation, expansion, and reconstruction of business, commercial, and industrial establishments that existed legally before a zoning enactment made them non-conforming. This grandfathering protection for these uses ends if the establishment ceases operation for 30 continuous months. The burden is on the municipality to show that the property owner intentionally and voluntarily abandoned the non-conforming use.

Any structure rebuilt on the site of the non-conforming use must conform to existing zoning requirements for setbacks, height, bulk, and physical location of a structure.

This statute also places limits on the expansion of non-conforming off-site signs. An off-site sign, however, does not preclude any new or additional conforming use on the property on which the sign is located or on adjacent property under the same ownership.

Provisions in the statute establishing the 30-month abandonment period that ends grandfathering protection, that require rebuilt structures to conform to existing zoning restrictions, and that limit expansion of off-site signs do not apply to home rule cities, but they may opt into them.

### **Wireless Cell Towers**

State law recognizes the ability of municipalities that have adopted planning and zoning regulations to regulate the siting of wireless cell towers, but prohibits: (1) regulating the placement of an antenna or related equipment on an existing tower unless this would require an extension that would require lighting or exceed the municipality's height limitation, (2) considering a co-location an expansion and imposing additional costs or operating restrictions in a co-location unless the tower is owned by the municipality, or (3) requiring an applicant to provide any justification for radio frequency need T.C.A. §§ 13-24-304 - 305. The Competitive Wireless Broadband Investment, Deployment and Safety Act of 2018 significantly limits the authority of cities to regulate the location and placement of "small wireless facilities" or small cell antenna. T.C.A. §§ 13-24-401 thru 412.

### **Development Rights**

T.C.A. §§ 13-7-101 and 201 authorize a city to purchase or accept the donation of development rights to real property.

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*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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