

Limits on Zoning Authority

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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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.

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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