County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

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# Land Use, Planning and Zoning

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county 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 county 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 CTAS website material.

Sincerely,

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# Land Use, Planning and Zoning

Reference Number: CTAS-521

# Comprehensive Growth Planning

Reference Number: CTAS-589

# County Growth Plans

Reference Number: CTAS-590

In 1998 the Tennessee General Assembly passed Public Chapter 1101, which requires a coordinated planning effort among a variety of public and private entities throughout the state. The legislation also reforms procedures and requirements for annexation and incorporation. Public Chapter 1101 was codified in T.C.A. § 6-58-101 *et seq*. The law calls for the development of a comprehensive growth plan in each county, covering projected growth for 20 years.

# Designation of Zones

Reference Number: CTAS-591

T.C.A. § 6-58-104(a)(2) specifies that the comprehensive growth plan must identify the following three (3) types of areas if they exist within the county:

1. Urban Growth Boundary (UGB) - a reasonably compact area that contains the corporate limits of a municipality and the adjoining territory where high density commercial, industrial, or residential growth is expected.
2. Planned Growth Area (PGA) - compact sections outside incorporated municipalities and outside growth boundaries where high or moderate density growth is expected, if there are such areas in the county; new incorporations may occur only within these regions. A county has authority to provide services within a PGA and to set a separate tax rate for these services.
3. Rural Area (RA) - territory that is not within another zone and that is to be preserved for uses other than high density development.

Several factors must be taken into account in determining the boundaries of these three (3) areas:

1. Population growth projections, to be developed in conjunction with the University of Tennessee;
2. Current and projected costs of infrastructure, urban services, and public facilities needed for development and methods to finance these needs;
3. The need for additional land area for high density development, after considering the feasibility of redeveloping all sites within the current boundaries;
4. The effect of development upon agricultural land, forests, recreational areas and wildlife management areas; and
5. The likelihood of eventual incorporation into a municipality.

T.C.A. § 6-58-106(a).

# Extraterritorial Planning Jurisdiction

Reference Number: CTAS-592

A city that has been granted power to zone beyond its corporate boundaries (T.C.A. § 13-3-102) cannot zone outside of its UGB, regardless of the five-mile limit. However, if the county has no zoning and the city has not received extraterritorial zoning authority under the statute cited above, then the municipality may zone beyond its city limits only with the approval of the county legislative body. This rule includes territory that is outside the city limits but inside the UGB. The county retains authority to enact zoning (T.C.A. § 13-7-101 *et seq*.) within a PGA, an RA, and a UGB (although presumably only that Section of the UGB that is outside of municipal boundaries). The new law does not expand a county's zoning authority or enact statewide zoning.

# Agreements Regarding Powers

Reference Number: CTAS-593
Counties and cities are authorized to make agreements to refrain from exercising powers, including annexation and receipt of revenue. After five (5) years, agreements to refrain from exercising powers may be renegotiated or terminated upon ninety (90) days notice. The act explicitly allows written contracts between municipalities and owners (developers) regarding annexation, validating those in existence on the effective date of the act.

# Amendment of Growth Plan

Reference Number: CTAS-594
Unless there are "extraordinary circumstances," the initial growth plan remains in place for three (3) years. After the three years, the growth plan may be amended as often as necessary. T.C.A. § 6-58-104(d)(1). Municipal or county mayors are to propose amendments to the growth plan. The mayor proposing the amendment is to file notice of the amendment with the county mayor and mayors of all the municipalities in the county. Upon receiving the notice, the county mayor shall reconvene or reestablish the coordinating committee within sixty (60) days. The coordinating committee then has six (6) months from the date of its first meeting on the proposed amendment to submit its recommendation to the local governing bodies. The amendment shall become part of the county's growth plan after being approved by the local governing bodies and the local government planning advisory committee. The burden of proving the reasonableness of the change is on the party proposing it.

# Joint Economic and Community Development Board

Reference Number: CTAS-596
In addition to the coordinating committee that is formed to formulate a growth plan and any amendments to it, the law requires a board with representatives from both public and private segments of the community to engage in long-term planning and maintain communication among the various interest groups.

Composition. The final makeup of each board is to be established by interlocal agreement, but at a minimum must include the county mayor, the mayor or city manager of each city in the county (in a county with multiple cities, the smaller cities may rotate for representation, according to interlocal agreement), and an owner of greenbelt property. Boards are encouraged to include school system representatives as well. A county or city mayor or city manager may designate an alternative representative on the board and its executive committee so long as the alternative has experience or education in administration, economic or community development, or planning and be able to speak for the represented official.

Executive Committee. The executive committee is to be selected by the entire board but must consist of at least the county mayor and the mayors of the larger municipalities.

Powers. Boards are authorized to exercise on behalf of constituent members any authority contained in the interlocal agreement that may be exercised separately by the constituent member. Such authority includes the authority to contract with an industrial development corporation, development district, human resources agency, nonprofit corporation, or private business to deliver services that further economic growth in the community.

Term of Office. The terms are to be determined by interlocal agreement, with a maximum of four (4) years; all terms must be staggered except for those of elected officials, whose terms of service on the board coincide with their terms of office.

Meetings. The full board must meet a minimum of four (4) times a year, and the executive committee must also meet at least four (4) times annually with an executive committee meeting occurring at least once in each calendar quarter. Both bodies are subject to the open meetings law and are required to keep minutes and attendance.

Funding. Costs are shared jointly among participating governments according to a statutory formula based upon population. The board may accept donations and grants. It must adopt a budget by April 1 each year; While participating governments retain full authority to approve their contributions to the board, if a participating government does not contribute its share, the board may impose such sanctions or conditions as it deems proper. Before applying for any state grant, local governments must certify their compliance with these provisions.

Exception. If a county has previously formed a similar agency, it may apply to the local government planning advisory committee for an exception to these provisions.

Donation of Funds. A joint economic and community development board is authorized to transfer or

donate funds that it has received from participating governments and outside sources to other public or non-profit entities within the county to be used for economic or industrial development purposes. T.C.A. § 6-58-114.

# Annexation

Reference Number: CTAS-598

In 2014, the law on annexation was substantially revised. Public Chapter 707 made several significant changes to the methods used by municipalities to annex unincorporated territory. Under Public Chapter 707, municipalities may no longer annex by ordinance and may only annex by resolution pursuant to T.C.A. 6-51-104, which generally requires written consent of the affected property owners or approval by referendum. No annexations by resolution of property being used primarily for agriculture will be permitted unless written consent of the property owners is obtained. Municipalities may, by resolution, propose annexation of territory that does not adjoin the boundary of the main part of the municipality if the territory is within the urban growth boundary and is either to be used for industrial, commercial or residential purposes in the future or owned by a governmental entity. Such resolution can only be ratified with written consent of the property owners. T.C.A. § 6-51-104.

A municipality may expand its urban growth boundaries to annex a tract of land without reconvening the coordinating committee or receiving approval from the county or any other municipality if: (1) The tract is contiguous to a tract of land that has the same owner and has already been annexed by the municipality; (2) The tract is being provided water and sewer services; and (3) The owner of the tract, by notarized petition, consents to being included within the urban growth boundaries of the municipality. T.C.A. § 6-58-118.

Finally, counties having a metropolitan form of government will be permitted to expand their urban services districts using any method authorized by their charter. This includes methods in general law which are referenced in the charter and which were applicable at the time the charter or charter amendment was approved. T.C.A. § 6-51-123.

# Notice of Annexation

Reference Number: CTAS-599

Before any territory may be annexed, the governing body of the municipality must adopt a plan of services establishing, at a minimum, the services to be delivered and the projected timing of the services. Upon adoption of the plan of services, the municipality must forward a copy of the plan of services to the county mayor in whose county the territory being annexed is located. T.C.A. § 6-51-102. The municipality must also forward a copy of the annexation resolution to the county mayor. T.C.A. § 6-51-104. The county mayor must also be notified by the annexing municipality of the final decision in any *quo warranto* proceeding contesting a proposed annexation or the outcome of any referendum regarding annexation. T.C.A. §§ 6-51-103, 6-51-105. The county mayor is required to notify the appropriate departments and offices of the county regarding information received from the municipality pertaining to a proposed annexation. T.C.A. §§ 6-51-102 through -105.

Annexing municipalities are also required to provide a copy of the annexation resolution, along with a copy of the portion of the plan of services dealing with emergency services and a detailed map designating the annexed area, to any affected emergency communications district upon ratification of a resolution to annex. T.C.A. § 6-51-119.

Once an annexation resolution is approved by referendum, the annexing municipality is required to record the resolution with the register of deeds in the county or counties where the annexation was adopted or approved. The annexing municipality must also send a copy of the resolution to the comptroller and the assessor of property of each county affected by the annexation. T.C.A. § 6-51-121.

# Distribution of Taxes after Annexation

Reference Number: CTAS-601

When a city annexes property that generates wholesale beer taxes or local option sales taxes, the amount of revenue produced at the time of the annexation continues to go to the county for a period of 15 years. Any increases over this amount are distributed to the annexing municipality. Note that this does not affect the distribution of the first half of the local option sales tax, which continues to go to education funding.

Formula for Distribution. If the business operated for a full twelve (12) months before annexation, the county receives the monthly average for that period. If the business operated for at least one (1) full

month but fewer than twelve (12) months before annexation, the county receives the average amount of each full month of operation. If the business operated for less than a month before annexation, or if it began operation within three (3) months of annexation, then the revenue for the first three (3) months is averaged and the county receives that amount.

Exceptions. There are several exceptions to the distribution formula. If the wholesale beer tax or the local option sales tax is repealed, revenue amounts from the repealed tax will end; similarly, if the distribution to municipalities is reduced by the General Assembly, revenue amounts will be decreased proportionally. Finally, if a business closes or relocates, thereby reducing tax revenues, the city may petition the Department of Revenue no more than once annually for a reduction in amounts. A county may voluntarily waive rights to the revenue.

County Responsibility. Upon annexation, each county is responsible for identifying tax-producing properties and providing a list of them to the Department of Revenue. Counties should also monitor the impact of annexations on all revenue-generating properties within the affected area. Some of the taxes received from such areas are not administered by the Department of Revenue. For example, certain of the taxes are collected and remitted by beer wholesalers. If the county does not monitor such transactions and inform the appropriate parties, it may lose out on tax revenue to which it is entitled.

T.C.A. § 6-51-115.

# Incorporation

Reference Number: CTAS-602

New municipalities may be created in Tennessee only inside a planned growth area as designated in a comprehensive growth plan. Any new municipality must enact a property tax at least equal to its share of state taxes and must adopt a plan of services within six (6) months of incorporation. Before an incorporation election may be held, the county legislative body must approve the city limits and urban growth boundary for the proposed municipality. T.C.A. § 6-58-112.

# Consolidation of City and County Governments

Reference Number: CTAS-603

After the passage of 1998 Public Chapter 1101, the law allows creation of a consolidation charter commission upon petition by qualified county voters equal to ten percent (10%) of the votes cast in the county for governor in the last gubernatorial election. (Previous law required the county and principal city to call for a consolidation commission.) The law also specifies procedures for appointment to the charter commission (under one (1) method, the county mayor appoints county members, subject to confirmation by the county legislative body). T.C.A. § 7-2-101.

# Regional Planning Commission

Reference Number: CTAS-605

In addition to comprehensive growth planning, there are other planning provisions in Tennessee statutes. The Department of Economic and Community Development has created and defined the boundaries of other planning regions, which are drawn without regard to county lines or other existing boundaries. T.C.A. § 4-3-701 *et seq*. For each planning region the department also creates a regional planning commission, or a municipal planning commission may direct regional planning under certain circumstances. T.C.A. §§ 13-3-101, 13-3-102. In actual practice, most planning regions consist of a single county.

# Membership of Planning Commission

Reference Number: CTAS-606

Except for planning regions consisting of a single county, the Department of Economic and Community Development determines the number of members (not fewer than five (5) nor more than fifteen (15)) on any regional planning commission. T.C.A. § 13-3-101. Before a member can be designated by the department, he or she must first be nominated in writing by the county mayor or the chief elected officer of a municipality within the planning region. The nominations for newly created or vacant positions on the commission must be received by the department within 30 days after the position becomes available. Members of planning commissions in single county planning regions are chosen by the county mayor, subject to the approval of the county legislative body. Members of local legislative bodies may serve; however, members from county and municipal legislative bodies must be fewer in number than a majority of the commission. And, with a few exceptions, public employees and officeholders must also make up

less than a majority. T.C.A. § 13-3-101.

Each regional planning commission is to elect a chair from among its appointed members. T.C.A. § 13-3-103. The legislative body of a county or municipality in which the commission operates may establish compensation for regional planning commission or zoning board members. T.C.A. § 13-3-101. The statutes do not specify times or places for planning commission meetings, but they do address terms of office as well as procedures for removal and vacancies. T.C.A. § 13-3-101.

In the absence of any provision in a metropolitan or county charter (or private act or interlocal agreement), the county mayor, county executive or metropolitan mayor or executive shall, in accordance with T.C.A. § 5-6-106, have the authority to appoint a person meeting certain qualifications as planning director. The planning director shall have the power and authority to hire and fix the compensation, within the funds appropriated by the legislative body for this purpose, of such other employees and staff as he or she may deem necessary for the work of the planning commission. T.C.A. § 13-3-103.

# Duties and Powers of Planning Commission

Reference Number: CTAS-607

The regional planning commission is charged with several specific duties. It is required to adopt a general plan, and any amendments thereto, for the physical development of the region, copies of which must be certified to the Department of Economic and Community Development and to the legislative bodies of each county and municipality in the region. T.C.A. §§ 13-3-301, 13-3-304. The general plan, and any amendments thereto, must be approved by the county legislative body to be operative. Furthermore, the county legislative body can amend the general plan on its own initiative. General plans must be consistent with the county's growth plan and may be adopted as part of the county's growth plan.

The planning commission is also to advise county and municipal governing bodies in such areas as public improvement programs and construction of roads, bridges, and other public structures. The regional planning commission should coordinate its efforts with those of any municipal planning regions within its area, cooperate with authorities in neighboring states and regions, and, in general, perform any functions needed to promote regional planning. T.C.A. § 13-3-104. In exercising several of its duties, including the adoption of a regional plan, subdivision regulations and zoning ordinances, planning commissions are charged with identifying areas with inadequate or nonexistent public or private services and facilities necessary for development to occur and including such considerations in the plans, regulations and ordinances.

One of the most important duties of the regional planning commission involves plat approval. After the commission has developed and filed a regional plan, subdivisions, except ones lying inside municipal borders, must be approved by the regional planning commission before it may be recorded by the county register. Plats dividing a tract into no more than twenty-five lots, if the development received preliminary plan approval through the planning commission, or five lots if the development did not require preliminary plan approval through the planning commission, do not require planning commission approval. Such plats may be endorsed by the secretary or other designee of the planning commission. The regional planning commission may delegate its plat approval authority to the commission's staff under certain conditions. T.C.A. § 13-3-402.

Regional planning commissions must approve or disapprove a plat within 60 days after the initial consideration by the commission at a regularly scheduled session, with an exception for holidays and unexpected office closings. Plats must be placed on the commission's agenda within thirty (30) days of the plat's filing or placed on the agenda for the next regularly scheduled commission meeting after the thirty (30) day period. These deadlines may be waived by the applicant. T.C.A. § 13-3-404. What constitutes a subdivision is defined in T.C.A. §§ 13-3-401(4) and 13-4-301(4). A representative of the commissioner of the state Department of Environment and Conservation (usually the county health officer) must approve subdivision plats when subsurface sewage disposal is to be used before the planning commission approves the plat. T.C.A. § 68- 221-407. A plat may be submitted only by the owner of the land (as defined in T.C.A. § 13-3-402) or by a governmental entity, and all plats must include the most recently recorded deed book and page numbers for all property included in the plat. T.C.A. § 13- 3-402. A plat must contain the personal signature and seal of a registered land surveyor or a registered engineer before the plat is eligible for filing in the register's office. T.C.A. § 66-24-116. Amendments, modifications, and corrections to recorded subdivision plats must have the approval of the appropriate regional or municipal planning commission to be eligible for recording with the county register of deeds, except that a survey of an easement or survey attached to an easement granted to a governmental entity may be recorded without planning commission approval, even if it modifies a plat of a recorded subdivision. T.C.A. §§ 13-3-402, 13-4-302.

All of these matters – platting regulations, road and utility requirements, and procedures for submission of

plats – are addressed more specifically in T.C.A. § 13-3-403 *et seq*. However, these provisions do not apply to any subdivision plat registered prior to February 14, 1935, or to land partitioned by a court of competent jurisdiction. T.C.A. §§ 13-3-407, 13-3-408. Furthermore, these sections do not repeal or impair private acts relating to planning requirements. T.C.A. § 13-3-409.

Additionally, regional planning commissions are required to adopt rules for the transaction of their business which must include the selection of additional officers from among its members it deems appropriate to fulfill the organizational needs of the regional planning commission, the requirements for the regional planning commission to make findings of fact, statements of material evidence and reasons for its actions as part of each motion or action of the regional planning commission and the keeping of a record of its resolutions, transactions, motions, actions, and determinations. T.C.A. § 13-3-103.

In order that the regional planning commission may accomplish its functions, it is granted certain statutory powers. One of the most significant is the authority to adopt regulations governing the subdivision of land within its jurisdiction; these regulations provide the requirements for plat approval. Counties may require legislative body approval of subdivision regulations or amendments enacted by the regional planning commission. T.C.A. § 13-3-403. Additionally, T.C.A. § 13-3-403(b) authorizes regional planning commissions to condition final plat approval on the completion of infrastructure improvements or in lieu of such completion, submittal of a bond, letter of credit, or other method of assurance, in form, in amount, and with conditions and surety satisfactory to the regional planning commission. The bond, letter of credit, or other method of assurance shall provide for and secure to the public and the local government the actual construction and installation of the infrastructure improvements within a period specified by the regional planning commission and expressed in the bond, letter of credit, or other method of assurance. The county attorney is required to enforce any bond, letter of credit, or other method of assurance by all appropriate legal and equitable remedies, and moneys collected on the bond, letter of credit, or other method of assurance shall be paid into the county's treasury. Upon the order of the regional planning commission, the moneys must be applied to the construction and installation of the infrastructure improvements. Planning commissions must include as part of their subdivision regulations provisions stating that they will only exercise their authority in accordance with the legal standards set forth in United States Supreme Court cases, *Nollan v. California Coastal Comm'n and Dolan v. City of Tigard*. T.C.A. § 13-3-403.

Also, the planning commission is entitled to relevant information from local officials, and its members may enter upon property for examination or survey. T.C.A. §13-3-104. The commission may hire employees, with some restrictions, and it may contract with planners and other experts. Expenditures of the commission are governed by T.C.A. § 13-3-103. Under certain circumstances the planning commission also has the power to combine substandard lots under one owner into one standard lot. T.C.A. § 13-3-402. The planning commission may also grant variances to subdivision regulations. T.C.A. § 13-3-402.

Additionally, T.C.A. §13-3-413 authorizes regional planning commissions to promulgate provisions in subdivision regulations and recommend zoning ordinance amendments for the establishment of review and approval powers for site plans and the establishment under the zoning provisions for review and approval of planned unit developments, overlay districts, mixed use developments, condominiums and other types of sustainable design and development of property. Infrastructure and internal development improvements such as public and non-public roads, water and sewer lines, landscaping, green space, sustainable design features and other improvements as required by the planning commission, either through its subdivision regulation or through the local government's zoning ordinance, shall be subject to bonding or other methods of guaranteeing their installation. The planning commission may set and hold the guaranteeing instruments or may designate another governmental body that duty and function.

T.C.A. §13-3-413 also provides for vested rights in preliminary development plans or final development plans or building permits if preliminary plans are not required. Under §13-3-413, the vesting period for building permits is as specified in the permit and the vesting period for development plans is three years from the date of preliminary plan approval. If an applicant receives final development plan approval, then the applicant is eligible to receive two additional years. Section 13-3-413 also specifies that the total vesting period may not exceed 10 years unless the local government grants an extension and the maximum vesting period for multi-phase developments is 15 years (for all phases); however, this time period can also be extended by the local government. Additionally, §13-3-413 provides that the development standards in effect at the time of plan or permit approval will apply to the property during the vesting period. Section 13-3-413 also specifies certain circumstances in which vesting rights can be terminated.

# Community Planning

Reference Number: CTAS-608
In addition to regional planning, the General Assembly has also provided means through which unincorporated communities may adopt unified planning strategies. T.C.A. §§13-3-201 through 13-3-203. Any region of less than 10 square miles in area and with more than 500 inhabitants may petition the Department of Economic and Community Development to create a community planning commission, which has all the powers and duties of regional and municipal planning commissions. T.C.A. §§ 13-3-201, 13-3-202.

# County Zoning

Reference Number: CTAS-609

# Zoning Regulation

Reference Number: CTAS-610
The county legislative body is authorized to regulate land areas outside incorporated municipalities in such matters as the location and size of buildings; the percentage of a lot that may be occupied; the size of yards, courts, and other open spaces; the density and distribution of population; and the uses of buildings and land. T.C.A. § 13-7-101. To carry out this authority the county legislative body may implement the zoning plans created by the regional planning commission.

After a planning commission certifies a zoning plan, including both the text of a zoning ordinance and a zoning map, then the county legislative body must hold a public hearing on the plan. Statutory requirements regarding notice, publication, and amendment procedures must be observed before the zoning ordinance can take effect. T.C.A. §§ 13-7-104, 13-3-105.

In formulating a zoning scheme, the regional planning commission may develop a single plan or successive plans for parts of the county it deems appropriate for development. These plans divide the territory of a county lying outside incorporated municipalities into zoning districts. All regulations must be uniform for each class of building throughout the district, but the regulations in one district may differ from those in another. The zoning plan may also provide for the transfer of development rights. T.C.A. § 13-7-101(a)(2). If the county legislative body chooses to enact the zoning plan for more or less territory than that encompassed in the plan certified by the planning commission, then it must resubmit the plan to the commission for approval. If the revised plan is disapproved by the commission, then at least two-thirds (2/3) of the entire county legislative body membership must vote for its approval for the revision to pass. T.C.A. § 13-7-102.

# Amendments

Reference Number: CTAS-611
The county legislative body is authorized to amend zoning regulations, although any amendment must first be submitted to the regional planning commission, which has thirty (30) days to pass the amendment or to offer suggestions. If the planning commission disapproves, the amendment becomes effective only through a subsequent majority vote of the county legislative body. Before final adoption, the county legislative body must hold a public hearing, giving at least fifteen (15) days notice (thirty (30) days in Shelby County) in a newspaper of general circulation in the county and including a summary of the proposed amendment. T.C.A. § 13-7-105.

# Board of Zoning Appeals

Reference Number: CTAS-612
The county legislative body is also authorized to create a board of zoning appeals to make special exceptions to zoning regulations, assist in settling boundary line disputes, interpret zoning maps, and consider similar questions. T.C.A. §§ 13-7-106 through 13-7-109. The county legislative body appoints three, five, seven or nine regular members of the appeals board, along with one or more associate members who can sit for regular members under some temporary disability. A joint board of zoning appeals may be appointed by two or more counties. Compensation and length of terms are determined by the county legislative body within certain statutory guidelines. Vacancies are filled for the unexpired term and in the same manner as the original appointments. The county legislative body may remove any member for cause upon written charges and after a public hearing, and may specify rules governing organization, procedure, and jurisdiction of the board. T.C.A. § 13-7-106. The board of zoning appeals may also adopt supplemental rules of procedure if these are consistent with state statutes and rules adopted by the county legislative body. T.C.A. § 13-7-107. Land use decisions made by the board of

zoning appeals, other than variances, must be consistent with the regional plan if the county legislative body adopts the general regional plan in the form of a resolution. T.C.A. § 13-3-304.

# County Building Commissioner

Reference Number: CTAS-522
The county is authorized to establish the position of county building commissioner, who is appointed by the county mayor and confirmed by the county legislative body. The building commissioner considers building permit applications and issues permits to those who comply with zoning regulations. Before any structure within the region is built, altered, or used, it must fully conform to all zoning regulations, and this compliance must be evidenced by a building permit. T.C.A. § 13-7-110. Building permit rules may also be enacted by private act. Any grant or refusal of a permit, or any other decision of the building commissioner, may be appealed to the board of zoning appeals. T.C.A. § 13-7-108. In the event any building official is denied permission to make an inspection, the official may obtain an administrative search warrant from a person authorized by law to issue warrants or from any court of record in the county where the official works. T.C.A. § 68-120-117.

# Special Zoning Provisions

Reference Number: CTAS-613
The county legislative body is also authorized to establish a historic zoning commission (T.C.A. § 13-7-401 *et seq*.), as well as special zones for flood control and solar energy systems. T.C.A. § 13-7-102. These special zoning statutes, as well as the general zoning statutes, do not apply to land used for agricultural purposes as long as any structures on the land (including residences of farmers and farm workers) are incidental to the agricultural purpose unless the property is near state federal-aid highways, public airports, or public parks. T.C.A. § 13-7-114. However, counties participating in the national flood insurance program are required to regulate buildings and development (including those related to agriculture) located within a special flood hazard area (one hundred-year floodplain) to the extent required to comply with the national flood insurance program. T.C.A. § 13-7-114(c).

Counties are also authorized to include provisions in their zoning ordinances allowing for temporary family healthcare structures as a permitted accessory use in any single-family detached dwellings. Persons seeking to install such structures are required to obtain a permit from the county and the county is authorized to charge a permit fee of up to $100. The structures would have to comply with all applicable local codes and ordinances. No advertising would be allowed on the structure or the property. Structures would have to removed within 30 days after their use ceases to be necessary. Local governments are authorized to charge a fine of up to $50/day for failure to timely remove the structure. Local governments are also authorized to revoke permits and/or seek injunctive relief for noncompliance with the statute. T.C.A. §§ 13-7-501 through 505.

# Enforcement and Application

Reference Number: CTAS-614
Any person or company who violates zoning regulations is guilty of a misdemeanor, and each day the violation continues constitutes a separate offense. In addition, the county legislative body, attorney general, district attorney general, county building commissioner, or neighboring property owner (who would be specially damaged) may initiate appropriate action to prevent or remove the unlawful construction or use. T.C.A. § 13-7-111. Also, under the 1995 County Powers Act, the county legislative body has the authority to establish monetary penalties for violation of lawful county regulations, including zoning regulations. T.C.A. § 5-1-121.

The provisions of T.C.A. § 13-7-101 *et seq*. specify that these zoning provisions do not repeal or modify any private act enacted before 1935 that relates to zoning regulations. T.C.A. § 13-7-115. However, whenever a private act imposes more rigorous standards than those required by statute, then the private act will govern. Conversely, whenever the statute is more stringent, then the provisions of the statute prevail over those of the private act. T.C.A. § 13-7-112.

Counties may not regulate, which includes the requirement of building permits, buildings or other structures that are incidental to the agricultural enterprise and are located on agricultural land, unless such buildings or structures are located on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks. Buildings used as residences by farmers and farm workers are considered to be "incidental to the agricultural enterprise". T.C.A. § 13-7-114. However, counties participating in the national flood insurance program are required to regulate buildings and development (including those related to agriculture) located within a special flood hazard area (one hundred-year

floodplain) to the extent required to comply with the national flood insurance program. T.C.A. § 13-7-114(c).

Counties also may not mandate the allocation of affordable or workforce housing units in existing or newly constructed developments through zoning regulations or other land use regulations or decisions. T.C.A. § 66-35-102.

# Municipal Zoning Outside City Limits

Reference Number: CTAS-615

A municipality has statutory authority to enact zoning regulations for territory adjacent to but outside of its boundaries if that area has no zoning already in force. T.C.A. § 13-7-302. In order to enact zoning outside its municipal boundaries, the municipal planning commission must also be designated as the regional planning commission (T.C.A. § 13-3-102), and the municipality must file notice of intent with the county mayor at least six (6) months before the final enactment of the ordinance. T.C.A. § 13-7-303. If the county subsequently adopts zoning covering that territory, the municipal zoning is automatically superseded and repealed. T.C.A. § 13-7-306. According to the comprehensive growth planning law, a city may not zone outside its urban growth boundary once this boundary is in place. T.C.A. § 6-58-106(d).

# Adoption of Building Codes

Reference Number: CTAS-616

The county legislative body may enact a resolution that adopts by reference any prepared building, plumbing, gas or fire prevention code. At least 90 days before the adoption of a resolution incorporating a code by reference, at least one copy of the code must be filed in the office of the county clerk. No resolution that adopts a code by reference will be effective until it is published in a newspaper of general circulation. T.C.A. § 5-20-102. Any code adopted by reference must be retained on file as a public record. T.C.A. § 5-1-116. These provisions apply only to the unincorporated area of a county and to those incorporated cities and towns within the county that do not elect to adopt their own codes regulating the same subject areas. T.C.A. § 5-20-106.

The adopting resolution may also incorporate by reference the administrative provisions of any code, or may include in the adopting resolution any suggested administrative provisions found in a code. If a code does not contain administrative provisions, the administrative provisions of another code may be adopted and included in the resolution. However, the penalty clause contained in such a code may not be incorporated by reference. T.C.A. § 5-20-105(a). Any official within the existing framework of county government may be charged with enforcing the code, including but not limited to officials who administer zoning regulations. T.C.A. § 5-20-103. A violation of any code is a misdemeanor. T.C.A. § 5-20-105(b). Additional enforcement power is vested in the county attorney or other designated county official who may, in addition to other remedies provided by law, obtain an injunction to prevent violation of any provision of the code. T.C.A. § 5-20-104.

Pursuant to T.C.A. § 68-120-101(a)(8), if a local government seeks to require sprinklers in residential construction, such requirements must be adopted by a 2/3 vote only after reading such ordinance or resolution in open session of the legislative body at meetings specially called on two (2) different days that are no less than two (2) weeks apart. Also requires that mandatory sprinkler requirements shall be voted on in an ordinance or resolution separate from any other ordinance or resolution addressing building construction safety standards.

The state fire marshal will recognize and accept certification of state, county and municipal employees from the National Fire Protection Association or the International Code Council, as satisfying the standards and qualifications for fire prevention and building officials. A county or other employing governmental entity must have all newly employed applicants for fire safety and building inspectors certified within 12 months of employment. T.C.A. § 68-120-113. Additionally, 2007 Public Chapter 582 enacted T.C.A § 68-120-118, which requires that all persons entering into employment after July 1, 2008 as inspectors to enforce plumbing, mechanical and fuel gas codes be certified by the state fire marshal. Inspectors hired after July 1, 2008 have up to 12 months from their date of employment to obtain certification; those who were already employed on July 1, 2008, are deemed to meet the certification requirements for 3 years from the date of certification, but will have to meet the requirements upon re-certification at the end of the initial 3 years. All certifications must be renewed every 3 years. The state fire marshal is directed to issue rules and regulations regarding standards and qualifications for certification, as well as a form application for certification.

# Tennessee Clean Energy Future Act of 2009

Reference Number: CTAS-617

In order to increase the state's energy efficiency, the Tennessee General Assembly enacted the Tennessee Clean Energy Future Act of 2009. 2009 Public Chapter 529. As part of this Act, the legislature amended T.C.A § 68-120-101, which provides for minimum statewide building construction standards.

Minimum statewide building construction standards existed before the passage of the Act. The standards, which include provisions relating to structural strength and stability, means of egress, and fire safety, are set by the state fire marshal and apply to state, city, county, and private buildings other than one and two family dwellings. The standards do not, however, apply to buildings in local jurisdictions that have adopted and are enforcing the International Building Code and either the International Fire Code or the Uniform Fire Code. Local jurisdictions can lose this exemption if they fail to adequately enforce the codes or if the codes they have adopted are not current within seven years of the latest edition (unless otherwise approved by the state fire marshal). For those buildings and jurisdictions that are subject to the state standards, the state fire marshal enforces the codes by reviewing and approving plans and specifications and charges fees to cover the costs.

As part of the effort to improve energy efficiency in the state, the Act amended T.C.A § 68-120-101 to add energy efficiency as an area that must be addressed in the minimum statewide building construction standards. The Act also added one and two family dwellings to the list of structures that are covered by the statewide standards. The Act did, however, exempt renovations to such one- and two- family dwellings from the statewide standards. In addition, the Act made it clear that the statewide standards will not include mandatory sprinklers for one and two family dwellings but local governments may adopt more stringent standards should they choose to do so.

The biggest, and most complex, changes to T.C.A § 68-120-101 related to exemptions available to local governments. A new provision in T.C.A § 68-120-101, not found in the prior law, allows local governing bodies to exempt their jurisdictions from the application of minimum statewide standards to one and two family dwellings regardless of whether the local jurisdiction is enforcing its own codes or has no codes at all. This exemption requires a two-thirds (2/3) vote by the local governing body and expires 180 days after the next local legislative body election (or at an earlier date set out in the resolution). Thus, should a county legislative body choose to opt out of the application of minimum statewide standards to one and two family dwellings in its jurisdiction, the exemption will only last from the effective date of the resolution until 180 days after the next county legislative body election. At such time, the county legislative body will have to pass another resolution (again, by a two-thirds (2/3) vote) should they choose to continue the exemption.

Should a local governing body change its mind about exempting its jurisdiction's one and two family dwellings from minimum statewide construction standards, the Act does permit local governing bodies to reverse their action at any time by a simple majority vote. Taking such action would make one and two family dwellings subject to the minimum statewide construction standards. Under the Act, local governing bodies are required to transmit any resolutions done under T.C.A § 68-120-101, whether they are opting out or back in, to the state fire marshal's office.

Effective May 4, 2017, residents in counties that have opted out of statewide residential building codes are authorized to request the state fire marshal to inspect their buildings for compliance with the statewide code. T.C.A § 68-120-101(b)(1).

As in the prior version of T.C.A § 68-120-101, local government jurisdictions can be exempt from statewide standards by enforcing standards themselves. The Act revises the criteria for this exemption. Under the Act, in order for local government jurisdictions to be exempt from the minimum statewide standards, they must demonstrate one of the following:

1. The local government has chosen to adopt and enforce building codes for all types of buildings and it has adopted the International Residential Code (for one- and two-family dwellings), the International Building Code (for all other types of buildings), and either the International Fire Code or the Uniform Fire Code; or
2. The local government has chosen to adopt and enforce building codes for all types of buildings other than one- and two-family dwellings and it has adopted the International Building Code and either the International Fire Code or the Uniform Fire Code; or
3. The local government has chosen to adopt and enforce building codes for one- and two-family dwellings only and it has adopted the International Residential Code and either the International Fire Code or the Uniform Fire Code; or
4. For one-family and two-family construction, the local government has adopted the International Energy Conservation Code, published by the International Code Council, and such Code is not more stringent than the state minimum standards.

To remain exempt, local jurisdictions must adequately enforce the codes and review plans and specifications and conduct inspections. And, as with the prior law, the codes adopted by local jurisdictions must be current within seven years of the date of the latest editions.

The Act provides that the state fire marshal will enforce minimum statewide standards with respect to buildings for which the local jurisdiction has not adopted and is not enforcing codes. For example, if a local jurisdiction has adopted and is enforcing codes for all buildings other than one and two family dwellings, the state fire marshal will enforce the minimum statewide standards for the one and two family dwellings (unless the governing body has exempted out one and two family dwellings as explained above)

The provisions of the Act amending T.C.A § 68-120-101 became effective on July 1, 2010.

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