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Granted Powers, Clear Limits: The County Powers Act and Land Use Controls in Unincorporated Areas

A Policy Guide and Toolkit for County Governments

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Key Takeaways

1. The County Powers Act (T.C.A. § 5-1-118) allows counties, by resolution of their legislative bodies, to exercise certain powers otherwise reserved to municipalities, organized into two tiers of authority.
2. Tier 1 powers (18 specific granted powers) require only a simple majority resolution and cover contracting, property, finance, public utilities, infrastructure, law enforcement, firefighting, and related functions.
3. Tier 2 powers (2 additional granted powers) require a two-thirds supermajority vote and confer general police and regulatory authority within unincorporated areas.
4. The Act expressly prohibits counties from regulating normal agricultural activities under either tier.
5. A 2026 Tennessee Supreme Court decision, *Tinsley Properties, Inc. v. Grundy County*, clarified that the County Powers Act cannot be used as a substitute for formal zoning procedures under the County Zoning Act.

Overview

The County Powers Act, codified at Tennessee Code Annotated § 5-1-118, allows counties, by resolution of their respective legislative bodies, to exercise certain powers that are otherwise granted to municipalities. The Act was originally enacted in 1995 and was subsequently amended in 2000, 2001, 2002, and 2003. It operates within an important foundational principle of Tennessee law: Tennessee is a [Dillon's Rule](#) state. **Counties have no inherent powers to control land use** and are limited to those powers the General Assembly has deemed appropriate to confer. See [Southern Constructors, Inc. v. Loudon County Board of Education](#), 58 S.W.3d 706, 711–12 (Tenn. 2001).

The County Powers Act creates two tiers of county authority: 1) a **standard tier** available by simple resolution and 2) an **enhanced tier** requiring a two-thirds supermajority vote, along with several important limitations and conditions.

Tier 1: Standard Powers (Simple Majority Resolution Required)

Under subsection (a) of the County Powers Act, a county legislative body may adopt a resolution to exercise the following municipal powers, many of which were already authorized in other portions of state law or within the state constitution:

1. Special Assessments for Local Improvements (T.C.A. § 6-2-201(3))
2. Contracting Authority (T.C.A. § 6-2-201(4))
3. Incurring Debt (T.C.A. § 6-2-201(5))

4. Issuing Bonds and Financial Instruments (*T.C.A. § 6-2-201(6)*)
5. Expenditure of Funds (*T.C.A. § 6-2-201(7)*)
6. Acquiring, Holding, and Disposing of Property (*T.C.A. § 6-2-201(8)*)
7. Holding Property in Trust (*T.C.A. § 6-2-201(10)*)
8. Authorization to hold and operate Public Utilities (*T.C.A. § 6-2-201(11)*)
9. Granting Utility Franchises (*T.C.A. § 6-2-201(12)*)
10. Contracting for Public Utilities and Services (*T.C.A. § 6-2-201(13)*)
11. Authorization to acquire and construct Public Buildings, Infrastructure, and Improvements (*T.C.A. § 6-2-201(18)*)
12. Authorization to Operate and Regulate Waste Collection and Disposal (*T.C.A. § 6-2-201(19)*)
13. Authorization to Operate Charitable, Educational, and Institutional Services (*T.C.A. § 6-2-201(26)*)
14. Power to Enforce Ordinances and Other Rules (*T.C.A. § 6-2-201(28)*)
15. Authorization to Hold Real Estate Beyond County Limits (*T.C.A. § 6-54-103*)
16. Authorization to Engage in Oil and Natural Gas Operations (*T.C.A. § 6-54-110*)
17. Authorization of Mutual Aid Agreements for Law Enforcement (*T.C.A. § 6-54-307*)
18. Authorization of Mutual Assistance in Firefighting (*T.C.A. §§ 6-54-601 through 6-54-603*)

Tier 2: Enhanced Police and Regulatory Powers (Two-Thirds Super-majority Required)

Under subsection (c)(1) of the County Powers Act, counties may, by a **two-thirds (⅔) vote** of the county legislative body — exercise the following additional municipal powers:

1. General Police Powers. Counties may define, prohibit, abate, suppress, prevent, and regulate all acts, practices, conduct, businesses, occupations, callings, trades, uses of property, and all other things detrimental (or liable to be detrimental) to the health, morals, comfort, safety, convenience, or welfare of inhabitants, and exercise general police powers. (*T.C.A. § 6-2-201(22)*)

2. Prescribing Limits for Nuisance-Prone Activities. Counties may prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security, or general welfare of the people may lawfully be established, conducted, or maintained. (*T.C.A. § 6-2-201(23)*)

Key Limitations and Conditions

Agricultural Activities Protected

Nothing in the County Powers Act grants counties the power to **prohibit or regulate normal agricultural activities**. This protection applies across both tiers of authority. (*T.C.A. § 5-1-118(b)*) [Communities should consult [T.C.A § 1-3-105](#) to gain an understanding of the broad statutory definition of the term “Agriculture.”]

Unincorporated Areas Only (Tier 2)

The enhanced police and regulatory powers under subsection (c)(1) apply **only within unincorporated areas** of the county. (*T.C.A. § 5-1-118(c)(1)*)

Municipal Authority Preserved

Nothing in the act may be construed to allow any county to prohibit or impede any municipality in exercising any power or authority the municipality may lawfully exercise. (*T.C.A. § 5-1-118(c)(1)*)

Grandfathering of Pre-2002 Resolutions

If a county adopted a resolution by two-thirds vote prior to April 17, 2002, pursuant to previous legislative acts, to exercise the enhanced police powers, **no further action** by the county legislative body is necessary to continue exercising those powers. (*T.C.A. § 5-1-118(c)(1)*)

Enforcement

[Attorney General's Opinion 03-024](#) states that ordinances or regulations passed under T.C.A. 5-1-118(c) are to be enforced by a civil lawsuit brought on behalf of the county. The attorney general further opined that since the statutory scheme does not designate a specific officer to prosecute ordinance violations, it appears that suits to enforce a regulation would be brought by the county attorney. According to the [Tennessee Supreme Court](#), a punitive fine levied by a local government cannot exceed \$50 unless the defendant is allowed to have a jury trial. Higher fines could be enforced if they are remedial in nature rather than punitive, but this distinction is difficult to make. Therefore, a county should generally limit monetary penalties to \$50 or less per violation. Penalty provisions of any regulations should be carefully considered by the county attorney.

State-Regulated Activities Exempt from Tier 2 Powers

The enhanced police powers under T.C.A. § 6-2-201(22) and (23) **do not apply** to activities, businesses, or uses of property and business occupations and practices that are subject to regulation under the following state statutes:

- **T.C.A. § 57, Chapters 5 and 6** — Alcoholic beverages (beer and liquor regulation)
- **T.C.A. § 59, Chapter 8** — Mining and mineral resources
- **T.C.A. § 60, Chapter 1** — Amusements (regulation of certain entertainment activities)
- **T.C.A. § 68, Chapters 201–221** — Environmental protection (air quality, water quality, solid waste, hazardous waste, and related programs)
- **T.C.A. § 69, Chapters 3, 7, 10, and 11** — Waterways, dams, levees, and water resources

(T.C.A. § 5-1-118(c)(2))

No Zoning Without Zoning: Variance and Nonconforming Use Rules Apply

Subsection (c)(3) of the County Powers Act states that all court decisions and statutory laws relating to **variances and nonconforming uses** applicable to zoning ordinances and land use controls apply to the enforcement and exercise of Tier 2 powers. (*T.C.A. § 5-1-118(c)(3)*).

Important Note: This provision makes clear that counties exercising enhanced police powers must observe the same legal protections afforded to property owners under traditional zoning law, including the right to seek variances and the right to continue pre-existing nonconforming uses. Such relief is typically granted via a Board of Zoning Appeals, which is required by statute for all jurisdictions that choose to adopt zoning. Recent case law has indicated that this subsection requires communities to adopt zoning if they wish to regulate the location and placement of intensive, but otherwise legal land uses, such as rock quarries, data centers, and others.

While local governments possess broad zoning discretion, Tennessee case law and statutory frameworks do not grant counties absolute power to arbitrarily "zone out" or exclude an otherwise lawful industry across an entire jurisdiction. See *Robertson County, Tennessee v. Browning-Ferris Industries of Tennessee, Inc.*, 799 S.W.2d 662 (Tenn. Ct. App. 1990). To completely ban a specific land use, a county must demonstrate that the use is inherently, and in all contexts, detrimental to public health, safety, or general welfare everywhere in the county. For rock quarries, data centers, and other uses which are legitimate commercial operations, an outright ban may be viewed by the courts as arbitrary and capricious if narrower regulations (such as noise limits, setback requirements, or zoning specific industrial corridors) could address the county's concerns.

Relevant Case Law

The scope and limits of the County Powers Act have been shaped by several significant Tennessee court decisions. Local governments should be aware of these rulings when evaluating the extent of their authority under the Act.

- **Robertson County, Tennessee v. Browning-Ferris Industries of Tennessee, Inc.**, 799 S.W.2d 662 (Tenn. Ct. App. 1990).

In this case, the Tennessee Court of Appeals held that a county may not use its zoning authority to totally exclude a lawful land use from its jurisdiction without demonstrating that the exclusion affirmatively promotes the health, safety, morals, and welfare of the community. The court found that while zoning ordinances carry a general presumption of validity, that presumption is overcome once a challenger demonstrates that a legitimate business has been excluded entirely, at which point the burden shifts to the local government to justify the exclusion.

- ***Southern Constructors, Inc. v. Loudon County Board of Education***, 58 S.W.3d 706 (Tenn. 2001).

In this case, the Tennessee Supreme Court established the foundational principle that Tennessee counties possess **no inherent governmental powers**. Counties may exercise only those powers expressly conferred or implied by the state constitution, by general law, or by private act.

- ***Cherokee Country Club, Inc. v. City of Knoxville***, 152 S.W.3d 466 (Tenn. 2004).

This decision established the "**substantial effects**" test for evaluating the validity of land use regulations. Under this framework, regulations that substantially affect property use must bear a reasonable relationship to a legitimate governmental interest. While the case arose in a municipal context, its holding applies equally to county regulations adopted under the County Powers Act, particularly those exercised under the Tier 2 police powers.

- ***SNPCO, Inc. v. City of Jefferson City***, 363 S.W.3d 467 (Tenn. 2012).

The Tennessee Supreme Court refined the *Cherokee Country Club* standard into a **two-step inquiry**: first, whether the regulation substantially affects property use; and second, if so, whether the regulation bears a reasonable relationship to a legitimate governmental purpose. This framework is directly applicable to any county regulation adopted under the Tier 2 powers of the County Powers Act and provides the standard against which such regulations will be measured in court.

- ***Tinsley Properties, Inc. v. Grundy County***, No. M2023-00490-SC-R11-CV (Tenn. Feb. 25, 2026).

In this landmark 2026 decision, the Tennessee Supreme Court held that a Grundy County resolution adopted under the County Powers Act banning quarries within 5,000 feet of schools, churches, daycares, parks, or residential subdivisions was effectively a **zoning ordinance**. Because the county enacted the resolution under the County Powers Act rather than following the procedural requirements of the County Zoning Act (T.C.A. Title 13, Chapter 7), the Court found the resolution unenforceable. The decision establishes that the County Powers Act **cannot serve as an alternative pathway** for land use regulations that are zoning in substance, regardless of their label. Counties wishing to regulate land uses based on geographic proximity or district-based classifications must follow formal zoning procedures, including proper notice, public hearings, and the involvement of a planning commission.

Practical Implication of Case Law Following *Tinsley* Decision

The *Tinsley Properties* decision (2026) incorporates the cases noted above and is the most directly relevant ruling for counties considering new regulations under the County Powers Act. It confirms that regulations which function as land use controls, and particularly those establishing geographic buffers, separation requirements, or district-based restrictions, will be treated as zoning ordinances and must comply with the County Zoning Act procedures. Counties that have already adopted similar resolutions under the County Powers Act should review them for potential vulnerability. Counties considering blanket prohibitions on certain uses should review the *Robertson County* case noted above as well.

Case to Watch: Exotic Ridge Crypto Company LLC v Hawkins County

ExoticRidge Crypto Company LLC v. Hawkins County is a federal lawsuit filed March 31, 2026, in the U.S. District Court for the Eastern District of Tennessee, brought by the Beacon Center of Tennessee on behalf of ExoticRidge, a Kentucky-based bitcoin mining company. ExoticRidge planned to build a cryptocurrency mining facility in Bulls Gap, Tennessee, powered by surplus ethane gas from an adjacent power plant. After significant community opposition arose over concerns about noise and environmental impact, the Hawkins County Commission [adopted a resolution in September 2025](#) citing authority granted by the County Powers Act. The effect of this resolution was to prohibit data centers and cryptocurrency mining operations in the county, citing the operations' potential burdens on infrastructure, the environment, and residents' quality of life. It should be noted that Hawkins County has no countywide zoning authority in place at this time.

When a [proposed settlement](#) was rejected by commissioners in February 2026, ExoticRidge filed suit [alleging](#) that the ban is unconstitutional and violates Tennessee law on several grounds, including that the county lacked the legal authority to impose such a restriction without zoning authority, failed to follow required procedural safeguards, and violated ExoticRidge's equal protection and due process rights under the Fourteenth Amendment. Hawkins County maintains that the ban was a proper exercise of its authority to protect the health, safety, and convenience of its citizens, and [has accepted pro bono representation](#) from the Southern Environmental Law Center to defend its position. As of July 2026, the case remains in its early stages. Its outcome could carry significant implications for whether Tennessee counties without zoning authority may enact industry-specific bans, and the constitutional limits on local governments seeking to restrict certain industries in response to community opposition.

Other Relevant Laws

1. **“Jackson Law”, T.C.A. § 68-211-701:** The so-called "Jackson Law" is an optional general law related to landfills that may be adopted by a county legislative body by a two-thirds (2/3) majority vote. If adopted, it provides that no new construction will be initiated for a landfill without the approval of the county legislative body unless the landfill only accepts waste generated by its owner and all such waste is generated in the same county as the landfill. Additionally, if such proposed construction is in an incorporated area or within one mile of an incorporated area, the governing body of the municipality must also approve before construction can be initiated.
2. **T.C.A. § 68-211-122:** In a statute separate from the "Jackson Law," municipalities must obtain the approval of the county legislative body at two consecutive regularly scheduled meetings before the municipality may exercise the power of eminent domain to obtain property to be used as a landfill for solid waste disposal outside of the corporate limits of the municipality. T.C.A. § 68-211-122.
3. **Adult-Oriented Establishment Registration Act of 1998, T.C.A. § 7-51-1101 et seq:** The primary state law that grants counties the authority to license and regulate adult- oriented establishments and entertainers. This registration law is optional for county governments and may be adopted by a two-thirds (2/3) majority of the county legislative body.
4. **T.C.A. § 7-51-1401 et seq:** This law regulates the hours of operation of most adult oriented businesses and provides that these businesses cannot be located within 1000 feet of child care facilities, public/private charter schools, public parks, residences, family recreation centers or

places of worship.

5. **T.C.A. § 13-24-301 et seq, Telephone and Wireless Communications:** No community may prohibit the placement of any facility used to provide telephone services to the public. Counties that have adopted planning and zoning regulations are authorized to plan for and regulate the siting of wireless telecommunications support structures in accordance with those regulations and applicable state law. Note: [Federal regulations preclude](#) citing environmental concerns related to radio frequency emissions as grounds for denying any such application.
6. **T.C.A. § 13-24-102, Group Homes:** No city or county may exclude group homes of eight or fewer mentally or physically handicapped persons in any district that allows single-family uses.
7. **T.C.A § 4-1-407, Religious Freedom:** Prohibits government entities from substantially burdening the free exercise of religion unless a compelling state interest can be demonstrated and achieved through the least restrictive means. Supplements the Federal Religious Land Use and Institutionalized Persons Act in that it provides a definition of the term “substantially burden” and applies strict scrutiny specifically to state and local government actions. See [Dayle Ward, et al. v. Metropolitan Government of Nashville and Davidson County, Tennessee, et al., M2018-00633-COA-R3-CV Tenn Ct App. 2019](#), which was a case in which a Board of Zoning Appeals granted an accommodation from zoning requirements applicable to property owned by a church, on which it sought to build 22 micro-homes to house the homeless. The Board’s decision was upheld upon appeal.

Best Practices for All

1. **Understand the distinction between police powers and zoning.** Following the *Tinsley Properties* decision, counties must carefully evaluate whether a proposed regulation under the County Powers Act is regulatory in nature or constitutes zoning in substance. Regulations that restrict land uses based on geographic location, proximity to other uses, or district-based classifications should be adopted under the County Zoning Act (T.C.A. Title 13, Chapter 7) rather than the County Powers Act. For example, a noise ordinance would likely be a regulatory mechanism authorized by the County Powers Act. On the other hand, a resolution of the County Commission prohibiting a rock quarry or data center within a specified distance of a residential

home would not be authorized by the County Powers Act. If the County wishes to impose such a restriction it must adopt zoning in accordance with applicable state law.

2. **Review existing resolutions for legal vulnerability.** Counties that have previously adopted land use–related resolutions under the County Powers Act should consult with their county attorneys to determine whether any existing resolutions may be considered zoning ordinances under the *Tinsley Properties* framework. Resolutions that impose geographic buffers, setback requirements, or use-based restrictions tied to specific areas are most likely to be affected. Total use prohibitions of otherwise legal and allowable uses may not be legally supportable.
3. **Follow proper procedures for Tier 2 powers.** Counties seeking to exercise the enhanced police and regulatory powers under subsection (c)(1) must ensure adoption by a two-thirds supermajority vote. Any specific regulations, such as a noise ordinance, enacted under these powers must also be adopted by a two-thirds vote of the county legislative body. Failure to meet the supermajority threshold renders the regulation void.
4. **Respect the agricultural activities exemption.** Counties should ensure that no resolution or regulation adopted under the County Powers Act has the effect of prohibiting or regulating normal agricultural activities. Given the importance of agriculture in many Tennessee counties, this limitation should be evaluated carefully during the drafting process. The Tennessee Farm Bureau provides [an excellent resource](#) on their website related to agricultural protections in the state of Tennessee.
5. **Observe variance and nonconforming use protections.** When exercising Tier 2 powers, counties must apply the same variance and nonconforming use standards that govern traditional zoning. This includes providing a mechanism for property owners to seek relief from regulations that create undue hardship and protecting lawful pre-existing uses from retroactive regulation. Such relief is typically granted via a Board of Zoning Appeals, which is required for all jurisdictions that choose to adopt zoning. The statute does not specify any other mechanism for the provision of relief to property owners.
6. **Coordinate with municipalities.** The County Powers Act expressly preserves municipal authority. Counties should coordinate with municipalities within their borders to avoid conflicting regulations and to ensure that county actions do not impede lawful municipal operations.

7. **Consult legal counsel before adoption.** Given the evolving case law, and particularly the *Tinsley Properties* decision, counties should involve their county attorney early in the process of drafting any resolution under the County Powers Act. Legal review is essential to confirm that the proposed action falls within the scope of the Act and does not require compliance with the County Zoning Act or other statutory frameworks.

Practical Significance with Regard to Land Use

The County Powers Act provides a meaningful, but bounded, toolkit for Tennessee counties. Counties that have not adopted comprehensive zoning under the County Zoning Act (T.C.A. § 13-7-101 to -119) often rely on § 5-1-118(c) police powers to regulate land uses in unincorporated areas. However, as the *Tinsley Properties* decision makes clear, counties must exercise caution if a resolution effectively functions as a zoning ordinance, and particularly if it seeks to divide the county into districts and/or to regulate land use by location, it must comply with the County Zoning Act's procedural requirements, regardless of the legal authority the county invokes.

Counties considering land-use regulations under the County Powers Act should:

- Ensure regulations are truly general police-power measures (applying uniformly) rather than location-based land-use controls. A potentially defensible example would be a countywide noise ordinance;
- Consult with legal counsel to assess whether a proposed resolution would satisfy the *Tinsley/Cherokee Country Club* substantial effects test;
- Consider whether formal adoption of zoning under the County Zoning Act would provide a more defensible regulatory framework;
- Be mindful of the statutory exemptions for state-regulated industries and the protection of agricultural activities;
- Remember that blanket prohibitions of otherwise legal uses may be subject to intense legal scrutiny and potential reversal.

Conclusion

The County Powers Act provides Tennessee counties with a meaningful set of tools to address local needs ranging from contracting and public utilities to law enforcement cooperation and, where authorized by supermajority vote, general police powers. However, the Act has clear boundaries. It does

not confer inherent authority, does not apply to agricultural activities, and, as the Tennessee Supreme Court confirmed in *Tinsley Properties*, cannot be used as a substitute for formal zoning procedures.

Counties that wish to exercise authority under the Act should do so with a clear understanding of both its powers and its limitations. Careful legal review, proper procedural compliance, and coordination with municipal partners will help ensure that county actions are both effective and legally defensible.

Need Assistance?

The Center for Local Planning stands ready to provide advice to local governments as they evaluate their authority under the County Powers Act. Whether your county is considering adopting a new resolution, reviewing existing regulations in light of recent case law, or exploring the transition to formal county zoning, we can help. Communities with questions may submit a request for assistance to planning@tennessee.edu.



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Tenn. Code Ann. § 5-1-118

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5-1-118. County powers shared with municipalities.

(a) Counties, by resolution of their respective legislative bodies, in addition to other powers authorized by general law or private act, may exercise the following powers granted to all or certain municipalities by the following code sections:

- (1) Section 6-2-201(3)-(8), (10)-(13), (18), (19), (26) and (28);
- (2) Section 6-54-103;
- (3) Section 6-54-110;
- (4) Section 6-54-307; and
- (5) Sections 6-54-601 — 6-54-603.

(b) Nothing in this part shall be construed as granting counties the power to prohibit or regulate normal agricultural activities.

(c)

(1) In addition to those powers granted to counties pursuant to subsection (a), any county may, by adoption of a resolution by a two-thirds (⅔) vote of their respective legislative bodies, exercise those powers granted to all or certain municipalities by § 6-2-201(22) and (23), except as provided in subsection (b) and subdivisions (c)(2) and (3). Any such regulations shall be enacted by a resolution passed by a two-thirds (⅔) vote of the county legislative body. The powers granted to counties in this subdivision (c)(1) apply only within the unincorporated areas. Nothing in this subdivision (c)(1) may be construed to allow any county to prohibit or in any way impede any municipality in exercising any power or authority the municipality may lawfully exercise. If, prior to April 17, 2002, a county has adopted a resolution by a two-thirds (⅔) vote, pursuant to previous acts enacted by the general assembly, to exercise the powers granted in accordance with this subdivision (c)(1), no further action by the legislative body of such county is necessary to continue exercising such powers.

(2) The powers granted by § 6-2-201(22) and (23) shall not apply to those activities, businesses, or uses of property and business occupations and practices that are subject to regulation pursuant to title 57, chapters 5 and 6; title 59, chapter 8; title 60, chapter 1; title 68, chapters 201-221; or title 69, chapters 3, 7, 10 and 11.

(3) All court decisions and statutory laws relating to variances and nonconforming uses applicable to zoning ordinances and land use controls shall apply to the enforcement and exercise of those powers granted pursuant to subdivision (c)(1).

History

Acts 1995, ch. 264, § 1; 2000, ch. 969, § 1; 2001, ch. 7, § 1; 2002, ch. 627, § 1; 2003, ch. 57, § 1.

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