

Collegedale Building and Property Maintenance Study:

A Guide for Building Construction and Property Maintenance
Code Enforcement

Ron Darden, Municipal Management Consultant

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THE UNIVERSITY of TENNESSEE 
MUNICIPAL TECHNICAL ADVISORY SERVICE

In cooperation with the Tennessee Municipal League

Collegedale Building and Property Maintenance Study

A Guide for Building Construction and Property Maintenance Code Enforcement

By Ron Darden, Municipal Management Consultant, The University of Tennessee's Municipal
Technical Advisory Service


THE UNIVERSITY *of* TENNESSEE 
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MUNICIPAL TECHNICAL ADVISORY SERVICE

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Introduction

Building and property maintenance codes address many of the health, safety, and aesthetic values of a community. Public officials and their constituents often complain that property maintenance enforcement efforts are ineffective and take too much time. The administration and enforcement of property maintenance laws, ordinances and codes often become difficult for a city. This report summarizes the building inspection program and outlines recommendations for enforcement of property maintenance standards; inspections and enforcement procedures; including recommended implementation provisions. This report includes recommended procedures for using the administrative hearing officer program (Attachment 1) and miscellaneous building and property maintenance code implementation forms.

Legal Basis for Code Enforcement

The city's charter, adopted ordinances, and state laws outline the city's authority to develop, adopt, and enforce property maintenance standards. Tennessee Code Annotated (TCA 6-54-502) authorizes any municipality to adopt by reference the provisions of any code or portions of any code. Copies of referenced codes must be kept at the office of the city recorder, penalties may not be adopted by reference, and notices and the use of liens must follow strict requirements of the law.

Adopted Codes

The city has adopted the following building and property maintenance codes:

- International Building Code, 2006 Edition, with appendices B, C, D, G and J.
- International Plumbing Code, 2006 Edition, with appendices C, E, and F.
- National Electrical Code, 2005 Edition.
- International Fuel/Gas Code, 2006 Edition with appendices A, B, and C.
- International Property Maintenance Code, 2003 Edition, with no appendices.
- Standard Unsafe Building Abatement Code, 1985 Edition.
- The North Carolina Accessibility Code, Volume 1-C, 1991 Edition with 1996 Revisions as prepared by the North Carolina Building Code Council.
- International Mechanical Code, 2006 Edition, with appendix A.
- International Residential Code, 2003 Edition.
- International Energy Conservation Code, 2003 Edition.

In addition the city has adopted portions of the City of Knoxville Best Management Practices Manual dated June 2006 for post-development storm water quality by ordinance. The city has also adopted manufactured homes permit fees and Chattanooga/Hamilton County trades license at the journeyman level or above.

The city's property maintenance laws are outlined in Title 13 of the City of Collegedale Municipal Code. The city has also adopted the provisions of the State's Slum Clearance law by ordinance. The city may use the provisions of TCA 6-54-113 for the enforcement of property maintenance codes. Junkyard provisions require a six (6) foot fence for screening, health and safety purposes. The inspectors are not certified to do natural gas inspections.

Building and Property Maintenance Inspections

The city employs two certified building inspectors. At least one of the inspectors is certified in residential and commercial code enforcement; and one has a residential and commercial electric certification. The inspectors are not certified to do commercial natural gas inspections. The city pays for training and license renewals for inspectors.

The city's building inspectors are responsible for the administration and enforcement of the International Building Code, International Property Maintenance Code, and other municipal codes. A review of the building code and enforcement procedures indicates:

Building Code

- ENERGOV software is used to track inspections.
- The building inspectors enforce the provisions of the zoning ordinance.
- Commercial applications for permits require 2 to 3 weeks for approval.
- Residential permits require a floor plan, site plan and elevations.
- The inspectors do not use an inspection check off sheet. (Attachment 13)
- Contractors and builders cannot access the permit tracking system.
- The inspectors are accessible during work hours.
- Inspectors are provided with field computers.
- There is no appeal board for building code violations.
- The inspectors indicate that they are supported in code enforcement by the administration.
- Applicants are permitted to pay for permits by credit card, cash and check.
- Modular homes are not allowed in residential zones.
- Building permits are required for any construction or improvement with a valuation of \$1,500 or more.
- One re-inspection is allowed without a fee. After the 2nd inspection there is a fee of \$50 per inspection.
- Contractors doing electrical work must hold a Chattanooga or Hamilton County electrical license. A \$50 re-inspection fee is required.

- Plumbing contractors must have a Chattanooga or Hamilton County plumber's license. A \$50 fee is charged after the 1st re-inspection.

Property Maintenance

- Junked automobile owners are contacted and a tag or violation is left on the automobile.
- A certified letter is then sent if compliance is not attained.
- There is no clear cut procedure for enforcement.
- Tall grass and weeds are a problem. If there are no results after contact, the city accepts bids for mowing and places a lien on the property if the work is not reimbursed.
- There is no detailed procedure for handling dilapidated properties.
- Absentee property owners are a problem in property maintenance enforcement.
- There is a problem of people living in a house with no plumbing.
- It is reported that the city judge is cooperative in enforcing the city property maintenance codes.
- The administration and enforcement of the property maintenance codes are often ineffective and invariably complaints are brought before the city manager and/or the city commission for enforcement and resolution.

Based on the administration and enforcement procedures outlined above, it is clear that efficient and effective procedures are needed.

Recommended Inspection Procedures

1. Tall grass and weeds, the accumulation of trash and junk, junked automobiles and dilapidated properties.
 - Attempt to contact the violator and discuss the violation and code standards. Request compliance within a reasonable period of time. Some cities may not want to go straight to a citation procedure without discussing the alleged violation and giving a reasonable period of time for remedy. (See Attachment 3 for a sample supplemental ordinance.)
 - If compliance is not obtained, send a certified letter stating the violation, a reasonable period of time for compliance and where you may be contacted.
 - Issue a notice of violation in compliance with the city's administrative hearing officer ordinance. (See Attachment 9.)
2. Building code violations and interpretations.
 - Contact the violator and discuss the violation and code standards. Request compliance within a reasonable period of time.
 - If compliance is not obtained, issue a stop work order with provisions for appeal to the building code appeal board. (Note: Follow the International Building Code stop work order procedures.)

3. Zoning Violations.

- Contact the violator and discuss the zoning requirements.
- Do not issue a permit or authorization to activate utilities until the zoning issue is resolved.
- Notify the city manager of the zoning violation and request assistance in resolving the zoning issue.

Recommendations for Effective Building and Property Maintenance Administration and Enforcement

General

1. Citations for tall grass and weeds, the accumulation of trash and junk, junked automobiles and dilapidated structures should be discussed with the alleged violator with reasonable time for remedy. (See Attachment 3.) If compliance is not obtained, bring the alleged violator before the administrative hearing officer for resolution with a citation. (See Attachment 5.) If the alleged violator cannot be personally contacted, send a certified or registered notice of violation to the address of the owner of record notifying them of the violation and a time for remedy. If remedy is not obtained, issue a citation for the alleged violator and forward a copy to the Administrative Hearing Officer. The AHO will review and take appropriate action under the AHO Ordinance.
2. Appoint a qualified building code appeals board to hear appeals of the interpretation of the building codes. MTAS does not recommend the use of the administrative hearing officer for interpretation of the provisions of the various building codes. The continued use of a notice of violation, stop work order and appeal board hearing has worked effectively and should be continued. (See Attachment 7-sample ordinance creating a board of adjustment and appeals.)
3. Do not operate a mowing service for violation of tall grass and weeds. After discussing the violation with the alleged violator and a satisfactory remedy is not obtained, cite the alleged violators before the administrative hearing officer and request a fine for non-compliance. If the alleged violator cannot be personally located, send a certified or registered letter to the owner of record stating the alleged violation and a reasonable time for remedy. Issue a citation with a copy to the AHO if compliance is not obtained.
4. Adopt a procedure for the recovery of costs where the city provides for repairs, alterations, or abatement of code violations. (See Attachments 10 and 11 for sample liens.) Include the recording of all liens in a book and a procedure for releasing the liens when the lien is satisfied. There are penalties associated with the failure to release a lien when the lien has been satisfied.

5. Follow the provisions of TCA 55-16-103 (1) (A) and (B) for the removal of abandoned vehicles left on the public rights-of-ways. This is handled by police officers.
6. When access for inspections is denied, use the provisions of TCA 68-120-117 to obtain an administrative warrant for access. (See Attachment 4.) The AHO cannot issue an administrative warrant for access.
7. Have the fire inspector accompany the building official on dilapidated structure inspections. Discuss the alleged violation with the owner giving a reasonable time for remedy. If remedy is not obtained, issue a citation with a copy to the AHO.
8. Adopt the Standard Housing Code provisions regulating the use and requirements for dwellings. (See Attachment 2.)
9. In a 1954 Supreme Court Ruling, modular homes are permitted in all residential zones. MTAS recommends that the city comply with this ruling. (See Attachment 14 for an MTAS Legal Opinion.)
10. Require inspectors to use inspection check off sheets. (See Attachment 13.) It serves as a good record of the inspection. Some builders complain that the inspector did not say anything about a problem during an inspection.
11. Use a development committee for a one-stop permitting procedure. Using this procedure the builder only has to go to one location to obtain a building permit. One member of the committee is assigned to guide the builder through the process. Once the development committee approves the drawings and submittals, a permit is issued. The committee should consist of the city planner, city manager, building official, electric system representative, natural gas representative, water and sewer representative and a representative from the fire department.
12. Follow the provisions of the Administrative Hearing Officer Ordinance. (See Attachment 1.)

Attachment 1. Administrative Hearing Officer Ordinance

ORDINANCE NO. 787

AN ORDINANCE AMENDING TITLE 20 TO ADD A NEW CHAPTER 3 OF THE COLLEGEDALE MUNICIPAL CODE ESTABLISHING AN OFFICE OF ADMINISTRATIVE HEARING OFFICER IN ACCORDANCE WITH TITLE 6, SECTION 54, SECTION 1001, *et seq.*, OF THE TENNESSEE CODE ANNOTATED.

WHEREAS, Tennessee Code Annotated § 6-54-1001, *et seq.*, enables municipalities, by ordinance, to create the Office of Administrative Hearing Officer to hear building and property maintenance code violations; and

WHEREAS, in order to promote and protect the health, safety, and welfare of the residents of Collegedale, the City Commission deems it necessary to create the Collegedale Municipal Office of Administrative Hearing Officer.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Collegedale, Tennessee, that Title 20 of the Collegedale Municipal Code is hereby amended by adding the following:

3-101 Municipal administrative hearing officer

(a) In accordance with Title 6, Chapter 54, Section 1001, *et seq.*, of the Tennessee Code Annotated, there is hereby created the Collegedale Municipal Office of Administrative Hearing Officer to hear violations of any of the provisions codified in the Collegedale Municipal Code relating to building and property maintenance including:

- (1) Building codes adopted by the City of Collegedale;
- (2) All residential codes adopted by the City of Collegedale;
- (3) All plumbing codes adopted by the City of Collegedale;
- (4) All electrical codes adopted by the City of Collegedale;
- (5) All gas codes adopted by the City of Collegedale;
- (6) All mechanical codes adopted by the City of Collegedale;
- (7) All energy codes adopted by the City of Collegedale;
- (8) All property maintenance codes adopted by the City of Collegedale; and
- (9) All ordinances regulating any subject matter commonly found in the above-described codes.

The administrative hearing officer is not authorized to hear violation of codes adopted by the State Fire Marshal pursuant to Tennessee Code Annotated §68-120-101(a) enforced by Deputy Building Inspector pursuant to Tennessee Code Annotated §68-120-101(f).

The utilization of the administrative hearing officer shall be at the discretion of the City Manager and/or the City Manager's designee, the Chief Building Official of the City of Collegedale, and shall be an alternative to the enforcement included in the Collegedale Municipal Code.

(b) There is hereby created one (1) administrative hearing officer position to be appointed by the City Commission pursuant to Section 3-105 below.

(c) The amount of compensation for the administrative hearing officer shall be approved by the City Commission.

(d) Clerical and administrative support for the Office of Administrative Hearing Officer shall be provided as determined by the City Manager.

(e) The administrative hearing officer shall perform all of the duties and abide by all of the requirements provided in Title 6, Chapter 54, Section 1001, *et seq.*, of the Tennessee Code Annotated.

3-102 Communication by administrative hearing officer and parties

(a) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative hearing officer presiding over a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.

(b) Notwithstanding subsection (a), an administrative hearing officer may communicate with municipal employees or officials regarding a matter pending before the administrative body or may receive aid from staff assistants, members of the staff of the city attorney or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative hearing officer would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as an administrative hearing officer without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as an administrative hearing officer in a contested case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative hearing officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) business days after notice of the communication.

3-103 Appearance by parties and/or counsel

(a) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(b) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by any provision of law, other representative.

3-104 Pre-hearing conference and orders

(a) (1) In any action set for hearing, the administrative hearing officer, upon the administrative hearing officer's own motion, or upon motion of one (1) of the parties or such party's qualified representatives, may direct the parties or the attorneys for the parties, or both, to appear before the administrative hearing officer for a conference to consider:

(A) The simplification of issues;

(B) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;

(C) The limitation of the number of witnesses; and

(D) Such other matters as may aid in the disposition of the action.

(2) The administrative hearing officer shall make an order that recites the action taken at the conference, and the agreements made by the parties as to any of the matters considered, and that limits the issues for hearing to those not disposed of by admissions or agreements of the parties. Such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(b) Upon reasonable notice to all parties, the administrative hearing officer may convene a hearing or convert a pre-hearing conference to a hearing, to be conducted

by the administrative hearing officer sitting alone, to consider argument or evidence, or both, on any question of law.

(c) In the discretion of the administrative hearing officer, all or part of the pre-hearing conference may be conducted by telephone, television or other electronic means, if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(d) If a pre-hearing conference is not held, the administrative hearing officer may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.

3-105 Appointment of administrative hearing officer/administrative law judge

(a) The administrative hearing officer shall be appointed by the City Commission for a four-year term and serve at the pleasure of the City Commission. Such administrative hearing officer may be reappointed.

(b) An administrative hearing officer shall be one (1) of the following:

- (1) Licensed building inspector;
- (2) Licensed plumbing inspector;
- (3) Licensed electrical inspector;
- (4) Licensed attorney;
- (5) Licensed architect;
- (6) Licensed engineer; or

(c) The city may also contract with the Administrative Procedures Division, office of the Tennessee Secretary of State to employ an administrative law judge on a temporary basis to serve as an administrative hearing officer. Such administrative law judge shall not be subject to the requirements of subsections 6-54-1007 (a) and (b).

3-106 Training and continuing education

(a) Each person appointed to serve as an administrative hearing officer shall, within the six-month period immediately following the date of such appointment, participate in a program of training conducted by the University of Tennessee's Municipal Technical Advisory Service, referred to in this part as MTAS. MTAS shall issue a certificate of participation to each person whose attendance is satisfactory. The curricula for the initial training shall be developed by MTAS with input from the administrative procedures division, office of the Tennessee Secretary of State. MTAS shall offer this program of training no less than twice per calendar year.

(b) Each person actively serving as an administrative hearing officer shall complete six (6) hours of continuing education every calendar year. MTAS will develop the continuing education curricula and offer that curricula for credit no less than twice per

calendar year. The education required by this section shall be in addition to any other continuing education requirements required for other professional licenses held by the individuals licensed under this part. No continuing education hours from one (1) calendar year may be carried over to a subsequent calendar year.

(c) MTAS has the authority to set and enact appropriate fees for the requirements of this section. The city shall bear the cost of the fees for administrative hearing officer serving the city.

(d) Costs pursuant to this section shall be offset by fees enacted.

3-107 Citations for violations-written notice

(a) Upon the issuance of a citation for violation of a municipal ordinance referenced in the city's administrative hearing ordinance, the issuing officer shall provide written notice of:

(1) A short and plain statement of the matters asserted. If the issuing officer is unable to state the matters in detail at the time the citation is served, the initial notice may be limited to a statement of the issues involved and the ordinance violations alleged. Thereafter, upon timely, written application a more definite and detailed statement shall be furnished ten (10) business days prior to the time set for the hearing;

(2) A short and plain description of the city's administrative hearing process including references to state and local statutory authority;

(3) Contact information for the city's administrative hearing office;
and

(4) Time frame in which the hearing officer will review the citation and determine the fine and remedial period, if any.

(b) Citations issued for violations of ordinances referenced in the city's administrative hearing ordinance shall be signed by the alleged violator at the time of issuance. If an alleged violator refuses to sign, the issuing officer shall note the refusal and attest to the alleged violator's receipt of the citation. An alleged violator's signature on a citation is not admission of guilt.

(c) Citations issued upon absentee property owners may be served via certified mail sent to the last known address of the recorded owner of the property.

(d) Citations issued for violations of ordinances referenced in the city's administrative hearing ordinance shall be transmitted to an administrative hearing officer within two (2) business days of issuance.

3-108 Review of citation – levy of fines

(a) Upon receipt of a citation issued pursuant to Section 3-107, an administrative hearing officer shall, within seven (7) business days of receipt, review the appropriateness of an alleged violation. Upon determining that a violation does exist, the hearing officer has the authority to levy a fine upon the alleged violator in accordance with this section. Any fine levied by a hearing officer must be reasonable based upon the totality of the circumstances.

(1) For violations occurring upon residential property a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars (\$500.00) per violation. For purposes of this part, "residential property" means a single family dwelling principally used as the property owner's primary residence and the real property upon which it sits.

(2) For violations occurring upon non-residential property a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars (\$500.00) per violation per day. For purposes of this part, "non-residential property" means all real property, structures, buildings and dwellings that are not residential property.

(b) If a fine is levied pursuant to subsection (a), the hearing officer shall set a reasonable period of time to allow the alleged violator to remedy the violation alleged in the citation before the fine is imposed. The remedial period shall be no less than ten (10) nor greater than one hundred twenty (120) calendar days, except where failure to remedy the alleged violation in less than ten (10) calendar days would pose an imminent threat to the health, safety or welfare of persons or property in the adjacent area.

(c) Upon the levy of a fine pursuant to subsection (a), the hearing officer shall within seven (7) business days, provide via certified mail notice to the alleged violator of:

(1) The fine and remedial period established pursuant to subsections (a) and (b);

(2) A statement of the time, place, nature of the hearing, and the right to be represented by counsel; and

(3) A statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes and rules involved.

(d) The date of the hearing shall be no less than thirty (30) calendar days following the issuance of the citation. To confirm the hearing, the alleged violator must make a written request for the hearing to the hearing officer within seven (7) business days of receipt of the notice required in subsection (c).

(e) If an alleged violator demonstrates to the issuing officer's satisfaction that the allegations contained in the citation have been remedied to the issuing officer's satisfaction, the fine levied pursuant to subsection (a) shall not be imposed or if already imposed cease; and the hearing date, if the hearing has not yet occurred, shall be cancelled.

3-109 Party in default

(a) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative hearing officer may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(b) If the proceedings are conducted without the participation of the party in default, the administrative hearing officer shall include in the final order a written notice of default and a written statement of the grounds for the default.

3-110 Petitions for intervention

(a) The administrative hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) business days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The administrative hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(b) If a petitioner qualifies for intervention, the administrative hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(2) Limiting the intervenor's participation so as to promote the orderly and prompt conduct of the proceedings; and

(3) Requiring two (2) or more intervenors to combine their participation in the proceedings.

(c) The administrative hearing officer, at least twenty-four (24) hours before the hearing, shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative hearing officer may modify the order at any time, stating the reasons for the modification. The administrative hearing officer shall promptly give notice of an order granting, denying or modifying intervention to the petitioner for intervention and to all parties.

3-111 Regulating course of proceedings – hearing open to public

(a) The administrative hearing officer shall regulate the course of the proceedings, in conformity with the pre-hearing order, if any.

(b) To the extent necessary for full disclosure of all relevant facts and issues, the administrative hearing officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the pre-hearing order.

(c) In the discretion of the administrative hearing officer and by agreement of the parties, all or part of the hearing may be conducted by telephone, television or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.

(d) The hearing shall be open to public observation pursuant to Title 8, Chapter 44 of the Tennessee Code Annotated, unless otherwise provided by state or federal law. To the extent that a hearing is conducted by telephone, television or other electronic means, the availability of public observation shall be satisfied by giving members of the public an opportunity, at reasonable times, to hear the tape recording and to inspect any transcript produced, if any.

3-112 Evidence and Affidavits

(a) In administrative hearings:

(1) The administrative hearing officer shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The administrative hearing officer shall give effect to the rules of privilege recognized by law and to statutes protecting the confidentiality of certain records, and shall exclude evidence which in his or her judgment is irrelevant, immaterial or unduly repetitious;

(2) At any time not less than ten (10) business days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit such party proposes to introduce in evidence, together with a notice in the form provided in subsection (b). Unless the opposing party, within seven (7) business days after delivery, delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made as provided in this subdivision (2), the affidavit shall not be admitted into evidence. "Delivery", for purposes of this section, means actual receipt;

(3) The administrative hearing officer may admit affidavits not submitted in accordance with this section where necessary to prevent injustice;

(4) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the municipality. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available; and

(5) (A) Official notice may be taken of:

(i) Any fact that could be judicially noticed in the courts of this state;

(ii) The record of other proceedings before the agency; or

(iii) Technical or scientific matters within the administrative hearing officer's specialized knowledge; and

(B) Parties must be notified before or during the hearing, or before the issuance of any final order that is based in whole or in part on facts or material noticed, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

(b) The notice referred to in subdivision (2) shall contain the following information and be substantially in the following form:

The accompanying affidavit of _____ (here insert name of affiant) will be introduced as evidence at the hearing in _____ (here insert title of proceeding). _____ (here insert name of affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify _____ (here insert name of the proponent or the proponent's attorney) at _____ (here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or

delivered to _____ (here insert name of proponent or the proponent's attorney) on or before _____ (here insert a date seven (7) business days after the date of mailing or delivering the affidavit to the opposing party).

3-113 Rendering of final order

(a) An administrative hearing officer shall render a final order in all cases brought before his or her body.

(b) A final order shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The final order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.

(c) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The administrative hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

(d) If an individual serving or designated to serve as an administrative hearing officer becomes unavailable, for any reason, before rendition of the final order, a qualified substitute shall be appointed. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

(e) The administrative hearing officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(f) A final order rendered pursuant to subsection (a) shall be rendered in writing within seven (7) business days after conclusion of the hearing or after submission of proposed findings unless such period is waived or extended with the written consent of all parties or for good cause shown.

(g) The administrative hearing officer shall cause copies of the final order under subsection (a) to be delivered to each party.

3-114 Final order effective date

(a) All final orders shall state when the order is entered and effective.

(b) A party may not be required to comply with a final order unless the final order has been mailed to the last known address of the party or unless the party has actual knowledge of the final order.

3-115 Collection of fines, judgments and debts

The city may collect a fine levied pursuant to this section by any legal means available to a municipality to collect any other fine, judgment or debt.

3-116 Judicial review of final order

(a) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review.

(b) Proceedings for judicial review of a final order are instituted by filing a petition for review in the chancery court in the county where the municipality lies. Such petition must be filed within sixty (60) calendar days after the entry of the final order that is the subject of the review.

(c) The filing of the petition for review does not itself stay enforcement of the final order. The reviewing court may order a stay on appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten (10) business days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied.

(d) Within forty-five (45) calendar days after service of the petition, or within further time allowed by the court, the administrative hearing officer shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties of the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the administrative proceeding, the court may order that the additional evidence be taken before the administrative hearing officer upon conditions determined by the court. The administrative hearing officer may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(f) The procedure ordinarily followed in the reviewing court will be followed in the review of contested cases decided by the administrative hearing officer, except as otherwise provided in this chapter. The administrative hearing officer that issued the decision to be reviewed is not required to file a responsive pleading.

(g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the administrative hearing officer, not shown in the record, proof thereon may be taken in the court.

(h) The court may affirm the decision of the administrative hearing officer or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the administrative hearing officer;

(3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5) Unsupported by evidence that is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the administrative hearing officer as to the weight of the evidence on questions of fact.

(i) No administrative hearing decision pursuant to a hearing shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

(j) The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record.

3-117 Appeal to Court of Appeals

(a) An aggrieved party may obtain a review of any final judgment of the chancery court under this chapter by appeal to the court of appeals of Tennessee.

(b) The record certified to the chancery court and the record in the chancery court shall constitute the record in an appeal. Evidence taken in court pursuant to Title 24 shall become a part of the record.

(c) The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure.

BE IT FURTHER ORDAINED, that this Ordinance take effect from and after its passage, the public welfare requiring it.

Passed first reading _____, 2012.

Passed second reading _____, 2012.

Mayor

Attest:

City Recorder

Approved as to form:

City Attorney

Attachment 2. Standard Housing Code Requirements.

The health and safety issues associated with occupancy levels can effectively be addressed with your housing code along with these recommendations.

- a) At least one (1) room in the dwelling shall contain not less than one hundred fifty (150) square feet.
- b) A kitchen-dining room combination, if any, shall be not less than one hundred (100) square feet.
- c) A first bedroom, if any, shall be not less than one hundred (100) square feet.
- d) A second bedroom, if any, shall be not less than seventy (70) square feet.
- e) There shall be at least seventy (70) square feet in each habitable room.
- f) There shall be at least one hundred fifty (150) square feet of floor space in habitable rooms for the first occupant in each dwelling unit; at least one hundred (100) square feet for each of the next three (3) occupants; and at least fifty (50) square feet for each additional occupant over the number of four (4). (Children one (1) year of age and under shall not be counted).
- g) There shall be at least eighty (80) square feet of bedroom floor space for the first occupant; at least twenty (20) square feet for the second occupant; and at least thirty (30) square feet for each occupant over the number of two (2). (Children one (1) year of age and under shall not be counted).
- h) Those habitable rooms which must be included to meet the foregoing minimum space requirements shall be at least seven (7) feet wide in any part with at least one-half (½) of the floor area having a ceiling height of at least seven (7) feet. That portion of any room where the ceiling height is less than five (5) feet shall not be considered as part of the required floor area.
- i) No basement shall be used as a habitable room or housing unit unless: (1) The floor and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness and condensation. (2) The total window area in each room is equal to at least the window area sizes prescribed for habitable rooms. (3) Such required window area is located entirely above the grade of the ground adjoining such window area unless provided with adequate window wells. (4) The total of operable window area in each room is equal to at least the area prescribed herein for habitable rooms, except where there is supplied some other device affording adequate ventilation and approved by the inspector.
- j) Toilet and bathing facilities shall be enclosed.
- k) There shall be no holes or excessive cracks in walls, ceilings, outside doors or outside windows.
- l) Access shall be provided to all rooms within a dwelling unit without passing through a public space.
- m) Doors shall be provided at all doorways leading to bedrooms, toilet rooms, and bathrooms and all rooms adjoining a public space.
- n) All doors providing access to any living unit shall have operable locks, and the owner shall provide a change of locks or keys for new tenants.
- o) All doors opening to the outside shall be reasonably weather tight.

- p) There shall be installed in every dwelling unit an operable smoke detector or alarm. The code requires a number of square feet for all sleeping areas per person and a number of square feet per person per unit.

MTAS recommends that you add requirements for a water closet, hand lavatory and bath facilities along the following guidelines: At least one (1) water closet, lavatory basin, and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each four (4) rooming units within a rooming house wherever such facilities are shared. All such facilities shall be located within the residence building served and shall be directly accessible from a common hall or passageway and shall be not more than one (1) story removed from any of the persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times. Such required facilities shall not be located in a cellar.

Attachment 3. Supplemental Property Maintenance Inspection Procedures for Administrative Hearing Officer Program

Ordinance No. _____

An Ordinance Providing for Supplemental Property Maintenance Inspection Procedures

Whereas, the City of Collegedale has adopted the State’s Administrative Hearing Officer Procedures; and

Whereas, the initial step under the Administrative Hearing Office procedure is the issuance of a citation upon an alleged property maintenance violation; and

Whereas, there is the need for the inspecting official to discuss the alleged violation with the property owner or occupant and give a reasonable period of time for remedy prior to the issuance of a citation; now

Therefore, Be It Ordained by the City of Collegedale, Tennessee as follows:

Section 1. Prior to the issuance of a citation for an alleged violation of the city’s property maintenance codes, the inspector shall first discuss the alleged violation with the property owner or tenant and allow a reasonable period of time for remedy. If compliance is not obtained, a citation under the Administrative Hearing Officer program shall be issued.

Section 2. If the property is vacant and the owner of record cannot be personally located, a notice of violation shall be sent to the owner of record requesting that the alleged condition be remedied within a reasonable period of time. If compliance is not obtained, a citation under the Administrative Hearing Officer program shall be issued.

Section 3. The provisions of this ordinance shall be supplemental to other municipal property maintenance notification procedures outlined in the municipal codes.

Section 4. This ordinance shall become effective upon its final passage and publication as required under the city charter.

Passed 1st Reading _____

Passed 2nd Reading _____

Mayor

Attest: City Manager

Attachment 4. Administrative Inspection Warrant

ADMINISTRATIVE INSPECTION WARRANT

State of Tennessee

City of _____

To Building Official of the _____ (city) State of Tennessee:

Proof by:

(1) affidavit having been made before me by _____ (name of city and building official) that there is probable and reasonable cause, pursuant to Public Chapter 326 of the State of Tennessee, to believe that violations of the _____ (list ordinances violated, either by general title or code number)

of the _____ city exist;

(2) Tennessee Code Annotated 68-120-113 authorizes cities to conduct inspections;

(3) A reasonable description of the property and items to be inspected _____

(4) Purposes of the inspection _____

(5) Other requirements of particularity required by the constitutions of the United States and the State of Tennessee, regarding administrative inspections:

You are therefore hereby commanded to make immediate inspection of said premises, the same being located in _____ (city), including all of the buildings and outbuildings found on the premises; and I hereby certify that I signed and delivered this inspection warrant for execution to _____ at _____ o' clock, _____ m., on this the _____ day of _____, 20_____.

Judge of the City Court

3. Upon timely written application a more definite and detailed statement is furnished the alleged violator ten (10) business days prior to the hearing.
4. Upon receipt of the citation, the AHO reviews the citation within seven (7) business days of receipt of the citation.
5. Upon determining that a violation does exist, the AHO has the authority to levy a fine up to five hundred (500) dollars. Fines of five hundred dollars (\$500) per day may be levied on commercial properties.
6. If a fine is levied, the AHO will set a reasonable period of time to allow the alleged violator to remedy the violation alleged in the citation before the fine is imposed.
7. The remedial period shall be no less than ten (10) or greater than one hundred twenty (120) calendar days, except where failure to remedy the alleged violation on less than ten (10) calendar days would present an imminent threat to the health, safety or welfare of persons or property in the adjacent area.
8. Upon the levy of a fine, the hearing officer shall within seven (7) business days provide via certified mail to the alleged violator of:
 - a. The fine and remedial period.
 - b. A statement of the time, place, nature of the hearing, and the right to be represented by counsel; and a statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular section of the statute and rule involved.
9. The date of the hearing shall be no less than thirty (30) calendar days following the issue of the citation.
10. The alleged violator shall confirm the hearing by written request within seven (7) business days of receipt of the notice.
11. If an alleged violator demonstrates to the issuing officer's satisfaction the allegations contained in the citation have been remedied to the issuing officer's satisfaction, the fine levied shall not be imposed and if the hearing has not yet occurred, shall be cancelled.
12. If an alleged violator fails to attend or participate in a pre-hearing order, hearing or other stage of a contested case, the AHO may hold the party in default and either adjourn the process or conduct the hearing without the participation of that party.

III. The AHO is _____ and he may be reached at _____, Collegedale, Tennessee or by telephone at 423-____-_____.

IV. The hearing officer will review the citation and determine the fine and remedial period, if any within seven (7) days.

Signature of alleged violator

Date

If signature is refused, the issuing official shall so state and attest to the alleged violator's receipt of the citation.

V. This citation issued this _____ day of _____, 2012 by _____, Issuing Official (signature)

VI. Final disposition of alleged violation. Brief description.

Attachment 6. Designating the Inspectors with Special Police Powers

RESOLUTION NUMBER _____

A RESOLUTION DESIGNATING THE BUILDING OFFICIAL AND THE FIRE INSPECTOR AS A SPECIAL POLICE OFFICER FOR BUILDING AND PROPERTY MAINTENANCE ENFORCEMENT

Whereas, the building official and fire inspector of the City of Collegedale are charged with enforcement of the various building and property maintenance codes of the city, and

Whereas, the building official and fire inspector do not now have the necessary authority to cite offenders to city court, and

Whereas, the city desires that the building official have the authority to cite offenders to city court;

Therefore, Be It Resolved by the City of Collegedale, Tennessee as follows:

Section 1. The city building official and fire inspector are hereby designated as special police officers for purposes of enforcement of building codes and fire codes violations.

Section 2. The building official and fire inspector are authorized to issue a citation or complaint for offenses relating to code violations under provisions of Tennessee Code Annotated §7-63-101, it being in the public interest that violators be brought before the city court or Administrative Hearing Official for enforcement action.

Section 3. As a matter of local policy, when an offender refuses to accept a citation, the building official or fire inspector will call a police officer to affect an arrest for refusing to accept the citation.

Section 4. This Resolution shall take effect immediately upon its passage the public welfare requiring it.

This Resolution passed this _____ day of _____, 2012.

Mayor

Attest: City Recorder

Attachment 7. Creating a Board of Appeals for New Construction

Ordinance Number _____

AN ORDINANCE CREATING A BOARD OF APPEALS FOR NEW CONSTRUCTION

BE IT ORDAINED by the City of Collegedale, Tennessee as follows:

Section 1. Under chapter 4 add the following:

13-401. There is hereby created the following appeals board: City of Collegedale Board of Adjustments and Appeals for New Construction.

- a) The Board shall consist of a minimum of three members who are qualified by experience and training to pass on matters pertaining to building construction, maintenance and safety who are not employees of the city. The code official shall be an ex-officio member but shall have no vote on any matter before the board. The board shall be appointed by the city council, and shall serve staggered and overlapping terms.
- b) The Board of Adjustments and Appeals for New Construction shall annually select one of its members to serve as chairman.
- c) A member shall not hear an appeal in which that member has a personal, professional or financial interest.
- d) The city manager shall designate a qualified person to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the city manager.
- e) Compensation of members shall be determined by law.
- f) The present building construction board of appeals may serve as the City of Loudon Board of Adjustments and Appeals for New Construction.

13-403. Means of Appeal-Board of Adjustments and Appeals for New Construction.

- a) **Application for appeal.** Any person directly affected by a decision of the code official or a notice or order issued under the city building codes shall have the right to appeal to the Board of Adjustments and Appeals For New Construction, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of the code are adequately satisfied by other means, or that the strict application of any requirement of the code would cause an undue hardship.
- b) **Notice of meeting.** The Board shall meet upon notice from the chairman, within 20 days of the filing of an appeal, or at stated periodic meetings.
- c) **Open hearing.** All hearings before the board shall be open to the public. The appellant, the appellant=s representative, the code official and any person whose interests are affected shall be given an opportunity to be heard. A quorum shall consist of not less than two-thirds of the board membership.
- d) **Procedure.** The Board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require

compliance with strict rules of evidence, but shall mandate that only relevant information be received.

- e) **Board decision.** The Board shall modify or reverse the decision of the code official only by a concurring vote of a majority of the total number of appointed board members.
- f) **Records and copies.** The decision of the Board shall be recorded. Copies shall be furnished to the appellant and to the code official.
- g) **Administration.** The code official shall take immediate action in accordance with the decision of the board.
- h) **Court review.** Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the city administrator.
- i) **Stays of enforcement.** Appeals of notice and orders (other than imminent danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the appeals board.

13-405. Appeal Board Designations.

The Board of Adjustments and Appeals for New Construction is hereby designated as the Board of Adjustments and Appeals for the following codes:

- International Building Code
- International Plumbing Code
- Standard Gas Code
- National Electric Code
- National Fire Prevention Code

13-406. The following provisions from codes adopted by reference are amended as follows:

- a) **Standard Building Code.** Under Section 108, Construction Board of Adjustments and Appeals as adopted by reference delete the following: Subsections 108.1 Appointment; 108.2 Membership and Term; 108.4.3 Notice of Appeal; 108.5.1 Rules and Regulations. Section 110 Violations and Penalties is deleted and the City General Penalty Clause adopted by ordinance is hereby inserted in Section 110 Violations and Penalties. Insert Section 2, "There is hereby created the following appeal board" from the herein ordinance.
- b) **Standard Gas Code.** Under Section 108 Construction Board of Adjustments and Appeals adopted by reference delete the following: Subsection 108.1 Appointment; 108.2 Membership and Terms; 108.4.3 Notice of Appeal; 108.5 Procedures of the Board. Section 110 Violations and Penalties is deleted and the City's General Penalty Clause is inserted. Insert Section 2, "There is hereby created the following appeal board" from the herein ordinance.
- c) **Standard Plumbing Code.** Delete Section 109 Means of Appeal in its entirety. Delete Section 108.4 Violation Penalties and substitute the City's General Penalty Clause as adopted by ordinance. Insert Section 2, "There is hereby created the following appeal board" from the herein ordinance.

d) **National Fire Prevention Code.** Delete Section 105 Board of Adjustments and Appeals in its entirety. Section 102.3 Unsafe Buildings is hereby amended by deleting the following: "Standard Unsafe Building Abatement Code" from the last sentence and substituting the following: "International Property Maintenance Code." Insert Section 2, "There is hereby created the following appeal board" from the herein ordinance.

Section 3. This ordinance shall become effective immediately upon its passage, the public welfare requiring it.

Passed 1st reading _____

Passed 2nd reading _____

Mayor

Attest: City Recorder

Attachment 8. Notice of AHO Hearing

**CITY OF [_____]
IN THE OFFICE OF ADMINISTRATIVE HEARINGS
[or name of responsible entity]**

Respondent: [_____]
Citation No. [_____]

NOTICE OF HEARING

To: _____

PURSUANT TO Tennessee Code Annotated, Title 6, Chapter 54, Part 10, YOU ARE HEREBY NOTIFIED OF AN ADMINISTRATIVE HEARING IN THIS MATTER:

A HEARING WILL BE HELD ON THIS CITATION ON THE ____ DAY OF _____, 20__ AT _____ AM/PM AT [INSERT LOCATION].

YOUR INTERESTS MAY BE AFFECTED BY THIS HEARING AND YOU ARE ENTITLED TO BE PRESENT IF YOU SO DESIRE. A DEFAULT JUDGMENT MAY BE ENTERED IN YOUR ABSENCE.

THIS ____ DAY OF _____, 20__.

SIGNED: _____
[NAME] [TITLE]

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and exact copy of the foregoing has been served upon the Respondent via [personal service/certified mail] this ____ day of _____, 20__ at _____ [address].

Signature

Attachment 9. Administrative Hearing Officer Notice of Final Order

CITY OF [_____]
IN THE OFFICE OF ADMINISTRATIVE HEARINGS [or name of responsible entity]

Respondent: [_____]

Citation No. [_____]

Final Order

PURSUANT TO Tennessee Code Annotated, Title 6, Chapter 54, Part 10, this proceeding came to be heard this [date], upon motion by [Respondent], for an administrative hearing regarding the aforementioned citation and alleged ordinance violations therein;

IT IS HEREBY ORDERED that:

The initial determination of violation made by this body on [date] regarding the above-referenced citation is [upheld/overturned].

The fine levied upon the initial determination of violation is [enforced/suspended/quashed].

The following findings of fact are declared:

The following findings of law are declared:

This order is effective immediately upon its execution, the public welfare requiring it.

The Respondent has right to judicial review in Chancery Court of [_____] County. Petition for such appeal must be filed within sixty (60) days of the entry date of this order. Such petition does not stay this order.

ENTERED this [date].

Hearing Officer

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and exact copy of the foregoing has been served upon the Respondent via [**personal service/certified mail**] this ____ day of _____, 20__ at _____ **[address]** _____.

Signature

Attachment 10. Sample Notice of Lien for Property Clean Up

NOTICE OF LIEN

Pursuant to the authority granted to Tennessee municipalities under Tennessee Code Annotated, section 6-54-113 (c), a lien in the amount of _____ \$_____, and second only liens of the state, county and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right or interest in such property duly recorded or duly perfected by filing, prior to the filing of this notice, hereby is imposed and established on the following property for the cost of clean-up of said property by the City of _____, the property owner of record of said property having failed or refused to clean-up said property or to request a hearing on the order to do so, after due notice having been given by the City in accordance with Tennessee Code Annotated, section 6-54-113(b) [and/or section _____ of the Municipal Code of the City of _____/ Ordinance No: _____].

DESCRIPTION OF PROPERTY.

[Add any provisions or other information required by local custom or practice.]

This lien filed in the Office of the Register of Deeds of _____ County, this _____ day of _____, 20__.

Attachment 11. Sample Notice of Lien for Dilapidated Property, Repairs

NOTICE OF LIEN

Pursuant to the authority granted Tennessee municipalities under Tennessee Code Annotated, section 13-21-101 et seq., a lien in the amount of _____ (\$_____) and second only to liens of the state, county and municipality for taxes, any lien of the city for special assessments, and any valid lien, right or interest in such property duly recorded or duly perfected by filing, prior to the filing of this notice, is imposed and established on the following property for the cost of repairs, alterations or improvements, or vacating, closing, or removal or demolition by the City of _____, the property owner of record of said property having failed or refused to repair, alter or improve, or vacate, close or remove or demolish said property or request a hearing on the order to do so, after due notice having been given the property owner of record in accordance with section _____ of the Municipal Code of the City of _____/Ord. No. _____:

PROPERTY DESCRIPTION

[Add any provisions or information required by local custom or practice.]

This lien filed in the Office of the Register of Deeds of _____ County, State of Tennessee, this _____ day of _____, 20____.

Attachment 12. Abandoned Construction Act

AN ACT to amend Tennessee Code Annotated, Title 13,
Chapter 21, Part 1 relative to structures unfit
for human occupation or use.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, § 13-21-101, is amended by adding the following definitions:

“Abandoned construction” means that construction of an unfinished structure has ceased and that one hundred eighty (180) days after the building permit was issued or one hundred eighty (180) days after the day construction commenced, whichever is earlier, there is no good faith effort being made to complete the construction.

“Suspended construction” means that construction of an unfinished structure has ceased for sixty (60) days and that no good faith effort has been made within that sixty (60) day period to complete the construction.

SECTION 2. Tennessee Code Annotated, § 13-21-102, is amended by designating the present section as subsection (a) and adding the following as subsection (b):

(b)(1) When any municipality finds that there are structures in the municipality unfit for human occupation or use because of suspended construction, the municipality may use the procedures in this part to remedy the unsafe conditions caused by the unfinished structure and the suspended construction. All the applicable procedures set out in Section 13-21-103 apply, but upon the public officer’s finding that construction has been suspended and that the unfinished structure and the suspended construction create conditions that are dangerous or injurious to the health or safety of neighboring residents or the general public or the safety of neighboring structures, the public officer is limited to ordering that construction resume or that the owner make the unfinished structure safe by boarding up the structure, removing construction debris and other safety hazards from the construction area, and otherwise removing or neutralizing health or safety hazards. If the owner fails to take the actions within ten (10) days after being ordered to do so, the municipality may cause the unfinished structure to be boarded and the debris and other health and safety hazards removed or neutralized. The costs of doing so shall be assessed against the owner and may be collected as provided in § 13-21-103(6).

(2) When any municipality finds that there are structures in the municipality unfit for human occupation or use because of abandoned construction, the municipality may use all the procedures, remedies, and rights in this part to deal with the unfinished structure and the abandoned construction. When an unfinished structure meets both the definition of “suspended construction” and “abandoned construction,” it may be dealt with as abandoned construction.

SECTION 3. Tennessee Code Annotated, § 13-21-104, is amended by deleting the first two (2) sentences in the section and substituting the following:

An ordinance adopted by a municipality under this part shall provide that the public officer may determine that a structure is unfit for human occupation or use if the public officer finds that conditions exist in the structure that are dangerous or injurious to the health, safety, or morals of the occupants of the structure, the occupants of neighboring structures or other residents of the municipality, or to the safety of neighboring structures. These conditions may include the following (without limiting the generality of the foregoing): defects increasing the hazards of fire, accident, or other calamities; lack of ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; or suspended construction or abandoned construction.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

Attachment 13. Residential Building Construction Inspection Checklist
















Building Safety - Residential Inspection Checklist

Please note: This list is not inclusive of all items that may require inspection.

 **The complete set of approved plans must be on site for all inspections along with the sign off card.**

 **Failure to be ready for a requested inspection may result in an extra re-inspection fee.**

Footings:

-  Approved plans on site.
-  Sanitary facilities for workers on site.
-  Building setbacks and location must match approved plot plan/site plan.
-  Footing layout/dimensions must match approved plans.
-  Footings dug to width and depth as shown on approved plans.
-  Footings 12 inches (18" for 4500 elev+) into native soil with bottoms squared/level.
-  Check soils: no loose material, mud, organic material in footings, no expansive soil. If fill on site, a copy of the soil compaction report must be available for inspector.
-  Expanded footings installed per the approved plans with additional steel as required.
-  Exterior piers and/or interior footings installed per the approved plans with steel.
-  Steel properly lapped, supported and size indicated on approved plans **and grade pins set.**
-  Bulkheads installed in stepped footings.
-  Vertical steel (J bars) on site for placement at time of pour unless retaining walls then J bars must be tied in place to horizontal steel per the approved plans.
-  Plumbing/electrical sleeves cannot pass through the footings (they must be placed under footing or through foundation wall).
-  Plumbing sleeves must be twice the diameter of the piping that will pass through it.
-  Ground electrode (if required) installed (#4 bare or stranded copper, 30 feet in length with 20 foot in footing around steel and 10 foot out of footing).

Stem/Grout:

- Verify foundation walls same as approved plans (block /poured stem and size).
- Vertical placement of steel and size matches approved plans.
- Horizontal placement of steel is the proper size with approved lap, placed per the approved plans and properly supported.
- Steel meets required clearance from forms or block sides (1 ½" from sides of forms, centered in block).
- Any required hold downs must be on site and placed in the required locations as shown on the approved plans.
- Cleanouts installed at base of walls in cells with steel when walls over 48 inches in height.
- Wall height does not exceed 5 foot allowable for single pour.
- Foundation drains (if required) are installed with approved moisture proofing of walls.

Moisture proofing will require a protective membrane installed to prevent damage at the time of backfill. Note: This can be done as a separate inspection, but is a required inspection.

Under slab Plumbing:

Drain/waste/vent holding 10' stack water test or 5 P.S.I. air test with no greater than 30# gauge.
Installation of backwater valve, if required.
Sufficient slope of horizontal drain pipes (dependent on size of piping used).
Continuous support of pipe for its entire length with 6" of approved shade material under the piping. Additional shade material should be on site for use over the piping at the time of backfill.
Fixture vent fittings are of approved type (no San-Tees used in a horizontal position).
No flat venting (venting must be above the weir of the drain).
Proper fittings for vertical to horizontal change in direction.
Copper pipes penetrating concrete slabs are wrapped.
Water piping is continuous with no splices under slab (dependent on material used).
Cleanouts installed where required.
S-traps not permitted (trap arm must be twice the pipe diameter).
Openings through foundation for piping sleeves need to be sealed around the sleeve and in the annular space around the piping passing through the sleeve (see footing inspection for requirements for sleeving).

Under slab Mechanical:

Duct work is of an approved type.
Joints are sealed with approved sealant.
Duct work is properly supported with a full bed of shade material 6" deep with sufficient shade material to cover the piping at the time of backfill on site.
Ends of duct work where it comes through the floor are supported to prevent settling at the time of slab pour and sealed to prevent infiltration of any materials.

Slab grade:

Interior turn down footings installed per the approved plans (size/placement/steel).
Sub grade properly compacted.
Steel properly suspended (1 1/2" above sub grade).
Slab thickness meets the minimum required 3 1/2".
Electrical conduits (if installed) sealed to prevent moisture or concrete infiltration.
All plumbing piping penetrating slab protected from concrete. (wrapped)
Traps for showers/tubs boxed out.
In-floor heating properly installed and tested, 100 psi (if applicable).

Under floor framing:

Hold downs (anchor bolts) installed 12" from the end of each plate piece, every 6' and 2 in each piece regardless of its length.
Post/ beam strapping installed including strapping in beam pockets to beams.
Proper clearance of earth to wood under beams/floor joists (18" to joists, 12" to beams).
Truss joists installed per the manufacturer's installation instructions.
Hangers for truss joists correctly installed and of an approved type.
No notches in the bottom or top cords of the truss joists (engineering required if notched).

Adequate crawl space ventilation/cross ventilation (1 square foot per 150 square feet) with vents located a minimum of 3 feet from each corner and placed to achieve cross ventilation).
Crawl space access installed (18"x24" minimum unobstructed opening).

Roof nail/Exterior shear:

Roof sheathing proper size/grade nailed at 6" on the edge and 12" in the field.
Fasteners (nails or staples) are not too deep (penetrating the outside of the sheathing).
Sheathing is properly spaced (minimum 1/8" gap between sheets).
Roof design is the same as the approved plans.
OSB/plywood at ridge is a minimum of 12" wide or blocked under the sheathing if less than 12" in width.
Shear nailed at 6" on edge and 12" in the field or per the approved plans (engineering may be attached to approved plans).
Hold downs for Alternate Braced Wall Panels per the approved plans (Special inspection will be required if bolting for hold downs is not installed and drilling/epoxy required).
Braced wall panels placed per the approved plans (could include windows, doors, etc. added that are not on the approved plans which alters the shear requirements and will need approval for the changes in the shear panel locations).
Shear panels installed to provide continuous tie from the foundation to the double top plate at the roof line. (Splices will need to be blocked and nailed per nailing schedule).
First to second floor strapping is installed (MST44 minimum) at shear panel locations where required.

Temporary Electric Service:

Panel properly secured to the structure.
Grounding electrode installed, properly sized and attached to ground lug inside panel.
If ground rod used, proper acorn clamp on top of 8' ground rod and rod driven fully into the ground leaving the acorn clamp exposed for inspection.
20 amp GFCI receptacle and breaker installed and properly wired.
Conduits above grade must be rated impact resistant (primary and secondary).

Combination Inspection: (framing/electrical/mechanical/plumbing prior to insulation)

Framing:

Building dried in.
All glazing (windows) installed.
Windows within 24" arch of a door must be tempered.
Windows in tub enclosure must be tempered if less than 60 inches above tub floor.
Windows within 36 inches of a landing or within 60 inches above stair treads must be tempered.
Bedroom windows meet egress requirements.
Window sills for egress not over 44 inches off floor to finished sill height.
Check for blocking at interior braced wall panel locations for drywall application.
Fire block the stair stringers/drop ceilings/soffits/coves.
Fire block fireplace chases at floor/ceilings assemblies and attic.
Fire block every 10' horizontally and vertically such as furred spaces in basements.
Provide post beam strapping for continuous connection to the foundation.

Check studs for over-bored or over notched.
Trusses braced per the truss design drawings.
Uplift resistance on trusses per the truss design drawings at top and bottom plates.
Beam sizes per the approved plans and full bearing under beams at bearing points.
Provide full bearing under girder trusses to the foundation.
Double top plates installed and top plate joints must be lapped 48".
Provide 1/2" space around wood beams in concrete beam pocket with approved separation of wood to concrete under beam.
Provide attic access (22"x30" with 30" headroom).
Provide attic ventilation and insure it cross ventilates (1 square foot for every 300 square feet). Gable or ridge venting along with soffits vented.
Provide minimum 6'8" headroom at stairs.
Check rise and run on stairs. (rise maximum 7 3/4" run minimum 10")
Anchor bolts to be 12" from the end of each plate piece and every 6' not less than 2 in each piece regardless of its length.
Ledgers for decks/patio roof covers must be mechanically attached to the main structure.

Plumbing:

Test on gas line/water lines/DWV system (water-50 psi, gas 10 psi 30# gauge, DWV 5 psi 30# gauge or water through the roof, 60 psi for medium pressure gas systems).
Gauges must not be damaged or without glass.
Proper drain size.
Proper fittings used for directional changes, vertical to horizontal, horizontal to horizontal.
DWV piping/water piping is properly supported (dependent on material used).
Trap arms of an approved length (S traps not permitted) and properly sloped.
All traps are properly vented and no flat venting.
Clothes washer standpipe is 18" to 44" from inlet to weir of drain.
Cleanouts installed where required and accessible.
Flexible gas line properly installed per the manufacturers specifications.
Any unions in gas piping are accessible.
Gas shut -off at the fireplace location.
Couplings in water piping (plastic) are of an approved type and installed properly with proper materials used for bends and stub outs to exterior of walls.
Protective plates (FHA or strapping) for plumbing/electrical/mechanical where needed (holes drilled 1-1/4" or less from front of stud to piping).
Vents termination in an approved location.
Seal the plumbing penetrations (tub traps/around water closets) in the concrete slab (1 1/2" of concrete).
Sediment traps, where required, on gas lines downstream from shut off prior to piping entering appliance.

Electrical:

Electrical system complete and all circuits made up with grounds tied together using approved mechanical connection.
Smoke detectors installed where required and hardwired together on separate circuit (bedrooms, outside sleeping areas, unfinished basements, top of stairs leading to bedrooms, in room adjoining halls 24 inches higher than hall ceiling).
Smoke detectors must be 3' from return air or supply air registers (manufacturer's requirement).
Service panel properly grounded.
Approved bushing used where home runs enter back of service panel.
Wiring is not in contact with abrasive surfaces, such as truss gusset plates.
Wiring proper distance from hot surfaces.
Aluminum wiring at lugs has Anti-oxidant.

Two wires of different sizes cannot be under the same lug in the service panel unless approved by manufacturer of service panel.
Electrical boxes are not overfilled.
Wiring sized for intended use.
Bathroom receptacles must be separate 20 amp circuits.
Outside receptacles cannot be wired off kitchen, laundry or bathrooms circuits.
Outdoor boxes must be weatherproof.
Provide two 20 amp small appliance circuits to kitchen and dining area.
Provide 20 amp circuit to washer receptacle location in laundry.
Provide outlet at front and rear of house (2 outside).
Receptacles placed per the requirements (every 12 feet, one in hall if over 10 feet in length, all walls over 2 feet must have one).
Electrical boxes properly supported.
Ground all metal electrical boxes with approved ground screw.
All wiring must terminate in an approved box.
NM-B (Romex®) must extend 1/4" inside the box with 6" of free conductor in the box and 3 inches past the face of the box.
Stair ways must have illumination.
Pancake boxes cannot be used as a junction box (termination box only).
Wiring properly supported within walls (8" from box and every 4').
Fan boxes properly supported and rated for ceiling fans.
Electrical wires not bundled for more than 24" (creates heat).
Provide approved bushings for wiring entering metal boxes.
Bond the metal gas and water lines (if no metallic piping, service panel should be labeled indicating "non-metallic water piping, do not use for ground").
Bond the building if steel framed.
Isolate the grounded conductor in the sub-panel and bond the metal enclosure.
Install protective plates on all wiring within 1-1/4" of the stud face.
Seal all unused opening in the outlet box or service panel.
Kitchen countertop receptacles properly spaced.
Island countertops must have one receptacle.
Bathroom receptacles to be within 36" of lavatory.
Each lavatory must be served by a separate receptacle or one centered between lavatories not greater than 36" from either lavatory.
Provide convenience receptacle within 25 feet of the equipment location and on the same level (if in crawl space, receptacle must be GFCI protected).
Provide switch (at access location) and light in attic or crawl space for equipment and separate single receptacle for appliance plug-in if only one appliance at the location.
Exits require lighting within 6 feet.
Sub panels cannot be located in closets or bathrooms.
Disconnect for appliances at appliance location unless service panel visible.
Recessed cans rated for insulation cover or screened to prevent insulation from lying on top of cans.
All junction boxes must be accessible.

Mechanical:

Bath fans and exhaust ducts in tub/shower area and toilet rooms installed properly and vented to an approved location outside the building (fans attached to ducting with aluminum tape).
Flexible supply ducts sealed at trunk line, joints, tap-ins and where fastened to boots with an approved mechanical connector.
Boots supported on two sides at ceiling.
Flexible ducting properly supported with no bends or sags restricting the air flow over 50%.
Main supply trunk line insulated.

Provide continuous walkway 24" wide from the attic access to the appliance location in the attic with a 30" platform in front of the appliance not longer than 20' (appliances should be installed and manufacturer's installation instructions provided at this inspection).

Ducts into a garage for heating or cooling must have fire dampers installed.

Return air properly located to assure air stratification.

Dryer vent does not exceed 25 foot limitation (subtract 5' for every 90 degree turn and 2 ½' for every 45 degree turn or provide manufacturers specifications).

Dryer vent cannot be screwed together.

Dryer vent material approved smooth rigid metal piping in concealed locations.

B-vent termination location approved and high enough above roof with a back draft damper.

B-vent for water heater minimum 5 feet from top of water heater to termination cap.

B-vent must be used in all concealed locations including attics and crawl spaces.

Screws cannot penetrate the inside wall of the B-vent.

Provide 1" clearance of B-vent to combustibles.

B-vent extends 6" below ceiling line at equipment location if not in concealed space.

B-vent properly supported at off sets.

B-vent fire blocked (metal) where it passes through floors and ceilings.

Provide adequate combustion air for gas fired appliances (1 square inch for every 1000 BTU's upper and lower or if all combustion air drawn from the outside 1 square inch for every 3000 BTU's upper only).

Exhaust ducting for range hood approved material with joints lapped properly (KD piping).

Gas appliances in garage on an 18" platform and protected from impact.

Manufactured fireplaces installed per the manufacturer's installation instructions.

Insure proper slope and support on condensate drains and they must terminate in an approved location.

Drywall:

Interior drywall braced wall panels installed and nailed where required on approved plans.

Drywall properly nailed (7" on center for nails, 12" on center for screws).

5/8" drywall on the ceiling of the garage supporting habitable space above.

Green board cannot be used in a horizontal application unless the framing members are 12" on center for ½" drywall 16" on center for 5/8" drywall.

Drywall on interior ceilings is 5/8" or ½" ceiling rated (sag resistant) where framing members are 24 inches on center.

Approved exterior drywall on exterior soffits at the porches/patio/covered entry.

Drywall trimmed to 1" clearance around the B-Vent.

Ceiling drywall installed perpendicular to the framing members.

Stucco:

Approved vapor barrier installed.

Weep screed installed at the base of the walls (2" above concrete, 4" above finished grade).

Corner reinforcing wire installed (corner aid or diamond mesh).

All pop outs properly installed with corner aid or diamond mesh or ribbed lath.

Proper lap on wire (2" horizontal and 1" vertical) and approved wire type.

Nailing (stapling) at 6" on center.

Staples are not set too deep (penetrates surface).

Lathing nailed or stapled with galvanized nails or staples to framing members.

All horizontal surfaces to be stuccoed are covered with diamond mesh.
Foam used in attic or crawl spaces is approved (flame spread/smoke density) or provided with thermal protection.

Yard lines:

Water yard line fully supported on 6" of approved shade material for its entire length.
Accessible water shut off within 18" of meter location (if city water or private water company).
Shut off inside the structure at the pump location if well.
Water yard line a minimum of 12" below finished grade (18" for elevations above 4000 feet).
Copper to PVC connections are Schedule 80 plastic (no threaded Schedule 40).
In line accessible backflow preventions installed at any T's in water yard line.
Sewer yard line requires a long sweep two way cleanout.
Sewer yard line a minimum of 12" below finished grade (18" for elevations above 4000 feet).
Sewer yard line fully supported on 6" of approved shade material for its entire length.
Proper distance maintained from other utilities (see Burial Depth Handout).
Proper slope on yard line to its inversion location (tank or sewer main).
Backwater valve installed if connection to city sewer system.
Gas yard line must be 12" below finished grade (plastic or iron piping).
Gas yard line fully supported on 6" of approved shade material for its entire length.
Gas yard line must be scotch coated for burial in the ground or approved plastic with a minimum 18 AWG copper tracer wire.
Risers on plastic gas piping must be metal.
Test on gas yard line (must hold 10# for 15 minutes on maximum 30# gauge).
Proper couplings at piping connections.
All couplings primed and taped with 40 ml tape to 6" beyond the coupling (primer should be visible beyond the tape).
All abrasions in the piping primed and taped with 40 ml tape to 6" beyond the abrasion.
Gas shut off at the house.
A dialectic union 6" above finished grade prior to the gas piping entering the building.
Secondary electrical conduits must be a minimum of 12 inches below grade and fully supported for their entire length by 6" of approved shade material.
Approved glue used for conduit connections.
Secondary electrical conduits under driveways must be 18 inches below grade.

Final Inspection:

General:

Permanent house numbers installed visible from the street.
All utilities connected to insure source of heat, hot water and sanitary facilities.
Exterior grading complete providing a positive slope away from the structure (6" within 10').
Door between house and garage is self-closing 20 minute door and hinges adjusted so door closes completely.
Continuous handrails on all stairs with 4 or more risers (3 or more treads/handrails must return in at the top and bottom of stairs).
Guards on all platforms/decks more than 30" above finished floor or grade.
Roof covering complete and flashings installed where required.
Level landings at all exterior doors and top and bottom of stairs.
All exterior wood protected from weather (primed or painted).
Exterior post beam connections at patio/deck with approved metal connections.
Doors do not swing over a step.

Penetrations at exterior into structure or crawl space are sealed.
Provide approved hearth at fireplace front where required.
Appliances located in garage are protected from impact and on 18" platform if gas.
No double keyed deadbolts installed.
All penetrations from outside to inside have been sealed.

Electric:

All circuits labeled in the service panel.
Two different size wires not under the same lug unless approved by panel manufacturer.
Two conductors cannot be served by a single breaker.
Flexible conduit properly supported at AC units.
AC disconnect not located behind the condenser.
Flexible electrical conduit to condenser is no longer than 6'.
Exterior/interior GFCI's working. (kitchen/bath/garage/outside/crawl space).
All the unused breaker locations in the service panel are sealed.
Clothes closet/storage closet lights not located close to shelf or restricted area.
No open incandescent bulbs in closets.
Cover plates on all switches/receptacles/unused light fixture locations.
Exterior receptacles not located under a porch/or covered entry must have in-use covers.
Motor for the jetted tub is accessible.
GFCI reset for the jetted tub motor is accessible and functioning.
Light fixtures installed and functioning.
All bedroom circuits (receptacles/outlets) must be Arc-Fault protected.
Disconnect at the water heater location if electric.
Smoke detectors in place, interconnected and functioning.

Mechanical:

B-vent termination caps installed and ascussion plates installed at ceiling lines.
B-vent termination in approved location (8' from vertical surfaces or 2' above).
Proper clearances maintained from B-vents to combustibles.
Condensate lines/mechanical lines properly supported.
Exhaust fan working.
AC condenser is on an approved platform 3 inches above grade.
Installation and operation instructions left with equipment.
Shut offs in gas line installed at all appliance locations.
Rigid nipple (BIP) installed to the exterior of the furnace housing.
Dryer vent termination cannot be screened and of approved type.

Plumbing:

Cleanout covers installed.
No leaks detected in plumbing system.
Traps under sinks level and trap arms sloped to drain.
Angle stops/shut offs installed at lavs/water closets.
Base of the water closet sealed.
Air gap for dishwasher at kitchen sink or high loop in dishwasher drain.
Expansion tank at water heater (unless it's a well).
T&P drain for water heater full size to exterior, independent, turns down 90 degrees and terminates 6" above finished grade at the exterior.
Anti-siphon devices installed on hose bibs.
Accessible shut off for fireplace/gas log lighter.
Sediment traps at the furnace and the hot water heater downstream from the shut off valve prior to piping entering the appliance.

Attachment 14. Modular Home Zoning

Housing; Mobile homes; Zoning; Zoning--Laws and regulations
Type:

Legal Opinion

Legal Opinion: By MTAS Legal Consultant Pamela Bingham

Reference Documents:

Text of Document: QUESTION

May the city enact local ordinances that would have the effect of excluding manufactured or modular homes from being situated inside the city's corporate boundaries, or by regulating such by zoning or land-use planning from land designated for residential use?

RESPONSE

No. Current state laws preclude zoning or land-use planning restrictions on such structures if imposed solely because the dwelling is partially or completely constructed in a manufacturing facility.

ANALYSIS

Initially, it should be noted that manufactured or modular homes have been extensively regulated on the state level by the Tennessee General Assembly. See e.g., T.C.A. §§ 68-126-101 et seq. [Uniform Standard Codes; inspection of materials and construction, licensing of manufacturers and dealers, inspection of installation, permits and fees; manufactured home anchoring]. The state law is in accord with the purposes of the National Manufactured Home Construction Act of 1974, 42 U.S.C. §§ 5401 et seq.

For example, 42 U.S.C. §§ 5401 et seq. governs placement of manufactured homes and specifically excludes mobile homes or homes mounted on a single chassis from the definition of "residential dwelling" :

(a) Notwithstanding any provision of the law to the contrary, no power or authority granted by this code to regulate zoning or land use planning shall be used to exclude the placement of a residential dwelling on land designated for residential use solely because the dwelling is partially or completely constructed in a manufacturing facility.

(b) "Residential dwelling," as used in this part, does not apply to factory-manufactured mobile homes constructed as a single self-contained unit and mounted on a single chassis, and as further defined in § 68-126-202(4), (6) and (7), nor shall this chapter have any effect whatsoever upon any zoning or other regulations whether state or local concerning such factory-manufactured mobile homes as herein defined.

T.C. A. § 13-24-202 addresses the general appearance and suitability of modular homes:

Such manufactured residential dwelling shall have the same general appearance as required for site-built homes.

The State has the authority and duty to approve the manufacture and inspection of installation of modular homes. In addition, city ordinances that provide for inspection of modular homes must not conflict with the state statutes:

T.C.A. § 68-126-304. Approval; local standards

(a)(1) After the effective date of the rules adopted pursuant to this part, no modular building unit shall be offered for sale, sold, or installed in this state unless it is approved and bears the insignia of approval of the commissioner, the commissioner's designee, or an approved inspection agency.

(2) All modular building units manufactured in this state, or intended to be offered by for sale, sold, or installed in this state, shall be inspected by the commissioner, the commissioner's designee, or an approved inspection agency, at the place of manufacture of the modular building unit.

(b)(1) No local standard relating to the construction or installation of modular building units shall be applicable to any modular building unit subject to this part unless such standard is identical to that set by the commissioner pursuant to § 68-126-302.

(2) Any modular building unit bearing an insignia of approval issued by the commissioner, the commissioner's designee, or an approved inspection agency pursuant to this part shall be deemed to comply with any local standard relating to the construction of modular building units.

(3) Subject to the provisions of subdivision (b)(1), a local government may make, and charge a fee for, an inspection of the installation of a modular building unit. Such fee shall be equal to the amount charged for a similar inspection on conventionally built housing.

(4) Local land use and zoning requirements, fire zones, building setback requirements, side and rear yard requirements, subdivision control, as well as the review and regulation of aesthetic requirements, are specifically and entirely reserved to local government. Such local requirements and rules which may be enacted by a local government must be reasonable and uniformly applied and enforced without any distinction as to whether a building is a conventionally constructed or modular building. (Emphasis added)

(5) Modular building units bearing an insignia of approval issued by the commissioner, the commissioner's designee, or an approved inspection agency pursuant to this part shall not be modified prior to or during installation except in conformance with the rules of the commissioner.

The statute that emphasizes state preemption in this industry is set forth in § 68-126-412 :

§ 68-126-412. Preemption

It is the intention of the general assembly that this part, and regulations issued pursuant thereto, preempt any local ordinance or regulation of installation of stabilizing systems on manufactured homes. All city, county and consolidated government resolutions, ordinances, regulations and code requirements on installation of stabilizing systems on manufactured homes are superseded by the provisions of this chapter, and regulations issued pursuant thereto.

In summary, a factory-manufactured home constructed on a double chassis and having the same appearance as a site-built home would fall within the term “residential dwelling, as opposed to “factory-manufactured mobile homes constructed as a single self-contained unit and mounted on a single chassis...”The statutes do not distinguish the terms “manufactured home” and “modular home;” instead, the terms are used interchangeably in the statutes.

It should be noted that the state statutes prohibit only those zoning and land-use restrictions that exclude a home solely because the dwelling is partially or completely constructed in a manufacturing facility. Obviously, restrictions based on other criteria may be valid under the law and yet result in the exclusion of a particular factory-manufactured home from an area on non-discriminatory grounds.

Please remember that these legal opinions were written based on the facts of a given city at a certain time. The laws referenced in any opinion may have changed or 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 database.

Last Updated 6/22/2009