



December 22, 2024

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# County Zoning

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee  
County Technical Assistance Service  
226 Anne Dallas Dudley Boulevard, Suite 400  
Nashville, Tennessee 37219  
615.532.3555 phone  
615.532.3699 fax  
[www.ctas.tennessee.edu](http://www.ctas.tennessee.edu)

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# County Zoning

Reference Number: CTAS-609

## Zoning Regulation

Reference Number: CTAS-610

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

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

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

## Amendments

Reference Number: CTAS-611

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

## Board of Zoning Appeals

Reference Number: CTAS-612

The county legislative body is also authorized to create a board of zoning appeals to make special exceptions to zoning regulations, assist in settling boundary line disputes, interpret zoning maps, and consider similar questions. T.C.A. §§ 13-7-106 through 13-7-109. The county legislative body appoints three, five, seven or nine regular members of the appeals board, along with one or more associate members who can sit for regular members under some temporary disability. A joint board of zoning appeals may be appointed by two or more counties. Compensation and length of terms are determined by the county legislative body within certain statutory guidelines. Vacancies are filled for the unexpired term and in the same manner as the original appointments. The county legislative body may remove any member for cause upon written charges and after a public hearing, and may specify rules governing organization, procedure, and jurisdiction of the board. T.C.A. § 13-7-106. The board of zoning appeals may also adopt supplemental rules of procedure if these are consistent with state statutes and rules adopted by the county legislative body. T.C.A. § 13-7-107. Land use decisions made by the board of zoning appeals, other than variances, must be consistent with the regional plan if the county legislative body adopts the general regional plan in the form of a resolution. T.C.A. § 13-3-304.

## County Building Commissioner

Reference Number: CTAS-522

The county is authorized to establish the position of county building commissioner, who is appointed by

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

## Special Zoning Provisions

Reference Number: CTAS-613

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

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

## Enforcement and Application

Reference Number: CTAS-614

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

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

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

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

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