



A SELECTED READING

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Adoption of Municipal Standard Codes and Ordinances by Reference

The cities and towns of Alabama have witnessed unprecedented growth during the last two decades. According to the most recent census data, for the first time in history, more people live in cities and towns than live in unincorporated areas.

This rapid urbanization of the population has produced a pronounced need for municipal ordinances designed to provide minimum standards of health, sanitation and safety for residential, commercial and industrial building construction; minimum standards for gas, electrical and plumbing installations; minimum regulations for fire prevention; uniform traffic regulations and other technical rules necessary to ensure the public health and welfare. Such controls are essential if municipalities are to prevent the costly blight of slums in the future and to qualify for federal assistance to accomplish certain projects.

Ordinances of this type are necessarily long and technical. Fortunately, numerous standard codes are published and distributed in pamphlet form and are available to cities and towns. It is possible for a city or town to adopt the provisions of a standard code published in pamphlet form without the expense of publishing the full text of the code in the adopting ordinance. By following prescribed procedures, cities and towns save both time and money.

Statutory Provisions

Express authority is given to cities and towns in Alabama to adopt, by reference, certain ordinances published in pamphlet or code form without publishing the full content of such pamphlets or codes. *See* Section 11-45-8, Code of Alabama 1975. Subsection (c) of Section 11-45-8 provides that municipalities may pass ordinances adopting rules and regulations which have been printed as a standard code in book or pamphlet form by reference without setting out those rules and regulations at length in the ordinance). Section 11-45-8 provides for the adoption of codes for any of the following:

- The construction, erection, alteration or improvement of buildings.
- Installation of plumbing or plumbing fixtures.
- Installation of electric wiring or lighting fixtures.
- Installation of gas or gas fixtures.
- Fire prevention.
- Health and sanitation.
- Milk and milk products.
- Parks.
- Airports.
- Waterworks and sewers.
- Traffic.
- Mechanical.
- Swimming pools.
- Housing.
- Standard code for elimination and repair of unsafe buildings.
- Other like codes.

Municipalities may adopt the Federal Motor Carrier Safety and Hazardous Material Regulations as a Code pursuant to Section 11-45-8, Code of Alabama 1975, except for provisions which exceed the authority of municipalities under Alabama law. AGO 1993-001.

Model ordinances which are not codes printed in book or pamphlet form may not be adopted using the procedure in Section 11-45-8(c). AGO 1994-141. In *Seewar v. Summerdale*, 601 So.2d 198 (Ala. Crim. App. 1992), the Court of Criminal Appeals held that a municipal ordinance adopting by reference all state misdemeanors must be adopted in accordance with Section 11-45-2, Code of Alabama 1975, and may not be adopted through the procedure for adopting codes in pamphlet form set out in Section 11-45-8 of the Code.

Additional Authority

State law requires the state building commission to adopt a building code for schools, hotels and movie theaters. A municipality and county may adopt the code and extend the application of the code to private buildings and structures. Section 41-9-166, Code of Alabama 1975, provides that municipalities may adopt any model building code published by the Southern Building Code Congress International and the National Electrical Code published by the National Fire Protection Association as a municipal ordinance, enlarging the applicability thereof to include private buildings and structures other than private schoolhouses, hotels, public and private hospitals and moving picture houses as it deems necessary and to prescribe penalties for violations thereof in the same manner in which other ordinances and related penalty provisions are adopted and prescribed. Changes in the provisions of the building code affected by the building commission may be adopted similarly by counties and municipalities. No county or municipality shall apply the building code to state buildings and construction of public schoolhouses.

Model building codes adopted by a county or municipality pursuant to this section shall only apply to structures and facilities on the customer's side of the electric meter and shall not apply to any electric power generation, transmission or distribution facilities on the electric service provider's side of the electric meter.

Nothing contained in Section 41-9-166 shall be construed as requiring the advertising or posting of the code itself. The provisions of this section shall be satisfied by giving of notice that it is proposed to adopt a code.

Recommended Procedure

The League recommends using the following procedure to adopt standard codes by reference. First, the municipal governing body must determine if there is a need for one or more of the 16 technical regulatory codes listed above. If codes are needed, the governing body should assign each field of regulation to the study of a committee composed of members of the governing body and citizens active in the field proposed to be regulated. Committees should report their recommendations to the governing body. Members may recommend the adoption of a standard code, with or without amendments, or may submit a set of regulations of their own composition with the recommendation that they be prepared as a code and printed in pamphlet form for adoption by reference.

After deciding to adopt a set of rules and regulations which have been printed as a code in book or pamphlet form, the governing body must adopt a resolution proposing the adoption of the specified code. The resolution should set a day, time and place for a public hearing to determine whether the code will be adopted. The resolution also should invite all persons interested to appear and be heard on the question. It is recommended that the public hearing be set for a regular meeting date, time and place so the code may be adopted at that meeting without the possible later need for proving the proper call of a special meeting.

The resolution must state that three copies of the code shall be filed, in the office of the municipal clerk, not less than 15 days prior to the public hearing for use and examination by the public. This resolution must be published once a week for two successive weeks before the date of the hearing in a newspaper published in the municipality. In municipalities which had a population of less than 2,000 as shown by the 1950 federal census, the governing body has the option of publishing the resolution in a newspaper or by posting the resolution in three public places in the municipality for the length of time required. One of the public places must be at the mayor's office in the city or town. *See*, Section 11-45-8, Code of Alabama 1975.

After the public hearing, a record of which should be made in the municipal journal, the governing body must determine if the code is to be adopted with or without amendments. After deciding to adopt the code, an ordinance specifying the adoption of the code by reference, pursuant to Section 11-45-8, must be passed by the governing body just as any other ordinance of general and permanent nature. Unanimous consent is required to consider passing the ordinance at the first meeting at which it is introduced. After adoption, the ordinance must be published as directed by Section 11-45-8, Code of Alabama 1975, for the publication of other municipal ordinances.

Upon publication of the ordinance, the municipal clerk must append his or her certification upon the record of the

ordinance stating the time and manner of publication of the ordinance.

Code Enforcement

All municipalities have statutory authority to enforce standard codes. Section 11-43-59, Code of Alabama 1975, gives municipalities the authority to require all persons or firms doing construction work to obtain building, plumbing and other permits from the municipality and to charge a fee for the permits. Fees charged for the permits should be reasonable and should approximate the cost to the municipality of inspecting the work permitted. The Attorney General has ruled that upgraded fire and building codes may be enforced against existing buildings. AGO 1987-296.

Municipalities have the authority to impose an ordinance requiring the annual inspection of apartments and rental houses for the purpose of ensuring compliance with the local building code. A municipality has the right to charge a reasonable fine or revoke the certificate of occupancy for any apartment or rental house failing to comply with the local building code. A municipality may charge a reasonable fee to defray the expense of performing inspections of apartments and rental houses for the purpose of ensuring compliance with the local building code. AGO 2007-009.

Municipal ordinances relating to fire protection, such as building codes and burn permits, may be enforced within the police jurisdiction of the municipality. Only municipal police officers have the authority to issue citations for violations of these municipal ordinance violations. The chief of a municipal fire department or municipally sanctioned volunteer fire department, as an assistant to the State Fire Marshal, who has complied with APOSTC standards, may, if directed by the Fire Marshal, issue a citation for the violation of a state law related to the matters set forth in Section 36-19-2 of the Code of Alabama 1975. However, state law allows any witness to the commission of a crime to go before a magistrate and swear out a warrant against the perpetrator of that crime. AGO 2009-075.

Section 40-9-13, Code of Alabama 1975, exempts volunteer fire departments from paying building inspection fees. AGO 2004-044. A Water, Sewer, and Fire Protection Authority established pursuant to section 11-88-1 of the Code of Alabama, is not exempt from paying for construction permits and review fees imposed by the municipality for projects that provide water and sewer services for the residents of the municipality. The Authority is obligated to acquire permits and adhere to the permitting process of the municipality, even if the projects meet State Building Codes and are engineered and inspected by a state licensed engineering firm. AGO 2010-035.

A county board of education must comply with the building code of the Alabama Building Commission but is not required to comply with county or city building codes. Board projects are not required to pay local building permits. AGO 2004-165. The following persons may enter into any school to inspect and enforce state fire prevention and protection laws: the State Fire Marshal; employees of the State Fire Marshal's office; the chiefs of police and fire departments; the mayor, if there is no fire department; the sheriff; and those persons acting under the authority of these officials as assistants to the fire marshal. AGO 2005-183.

Generally, mobile home parks should be considered general residential areas and be treated like any other residential premises. AGO 2010-092. The Alabama Manufactured Housing Commission has the statutory authority to regulate the construction, transportation, site location, and manufacturing standards of a manufactured building. Because a storm shelter is defined as a manufactured building, the Alabama Manufactured Housing Commission has the authority to regulate the sale and installation of storm shelters. AGO 2012-013. The Alabama Manufactured Housing Commission and the Alabama Licensing Board for General Contractors have concurrent jurisdiction to regulate the installation of nonresidential, prefabricated buildings and storm shelters that are permanently attached to real property where the cost of the undertaking is \$50,000 or more. AGO 2012-036. While standard codes may be enforced in the police jurisdiction, legislation adopted in 2015 places additional notice requirements on municipalities prior to enforcement of ordinances in the police jurisdiction. Please refer to the article on the police jurisdiction for more information on this.

Sources of Standard Codes

Standard building, gas, plumbing, fire, housing, swimming pool, electrical, energy, and mechanical codes are available from the International Code Council (formerly the Southern Building Code Congress International, Inc.), 900 Montclair Road, Birmingham, Alabama 35213-1206. Phone: 1-888-422-7233. **Web address:** www.iccsafe.org.

Caution Urged

Only the types of codes listed in Section 11-45-8, Code of Alabama 1975, may be adopted by reference. All zoning ordinances, and amendments thereto, must be published both prior to adoption and after adoption in accordance with Sections 11-52-77 et. seq. and 11-45-8 of the Code of Alabama. AGO 1981-224 (to Hon. O. Stanley Thornton, February 9, 1981).

AGO 1991-404. Publication on a noncommercial web site of a local government's enactment of a model building code does not infringe on the code-writing organization's copyright in the code itself. *Veeck v. Southern Building Code Congress Int'l, Inc.*, 293 F.3d. 791 (5th Cir. 2002).

Prior to 1995, all zoning ordinances and amendments thereto could not be adopted by reference to avoid publication costs. Such ordinances had to be published at length until the state Legislature, in 1995, amended Section 11-52-77, Code of Alabama 1975, to create a procedure for publication of certain zoning ordinances by reference. When a zoning ordinance is published by reference, the publication should be made in accordance with the procedures set out in Section 11-52-77(2) and Section 11-45-8(b)(2) Code of Alabama 1975. However, the Attorney General has held that a planning commission may adopt subdivision regulations in pamphlet form as provided in Section 11-45-8(c), Code of Alabama 1975, as long as other legal requirements for adoption of subdivision regulations are followed.

It is important not to confuse this procedure with the process adopted in 2011, which allows municipalities to publish planning and zoning ordinances in synopsis form by following the procedures set out in Section 11-45-8(2), Code of Alabama 1975.

Although only county commissions and municipalities have the power to adopt general residential construction and building codes, the Alabama Supreme Court has held that the State Fire Marshal may adopt statewide residential construction and building codes relating to fire prevention and protection that supersede the municipal and county codes to the extent they are inconsistent with the code adopted by the State Fire Marshal. *Ridnour v. Brownlow Homebuilders, Inc.*, 100 So.3d 554 (Ala. Civ. App. 2012).

A municipality does not have the authority to adopt an ordinance that would prohibit the water and sewer board from providing water and/or sewer service to residential and commercial buildings that do not meet the minimum standards of the municipality's building codes. The municipality does not have the authority to require the owner of a substandard property to bring the property up to minimum standards before water and/or sewer service can be restored. AGO 2013-039.

Assistance from the League

The League has sample ordinances and resolutions which can be used to adopt standard codes by reference.

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