

# Do We Need County Fire Codes in Texas?

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According to a 2015 newspaper report, Texas law prohibits 173 (68 percent) of the state's 254 counties from adopting a fire code. The article implies that the absence of a county fire code limits a county's ability to protect the public from fire risk. The article continues:

*"Despite the lessons from the West Fertilizer Co. fire and explosions about the value of fire prevention, site security and safe storage of dangerous goods, Texas prohibits nearly 70 percent of its counties from having a fire code.*

*Fire codes aren't just for fires. They also contain rules for managing explosive or toxic chemicals, including specific guidelines for ammonium-nitrate fertilizer, the substance that exploded and killed 15 people and injured 200 in West on April 17."*<sup>1</sup>

## Call for more regulation

The West incident has spurred the call for additional fire prevention for all Texas counties. Legislation was introduced in the 84<sup>th</sup> Legislature for county fire codes, for additional regulations on the storage of ammonium nitrate, and for additional funding for emergency responders.

Supporters said all counties need the authority to adopt and enforce fire codes in order to protect the safety and welfare of the public. Opponents said fire codes in less-populous counties would be too restrictive and unnecessary. Many agreed that Texas is too large for a State fire code; others argued that local control would lead to inconsistent regulations and interpretation.

And special interests were quick to request exemption from any new fire codes. The fireworks industry requested exemption in certain counties because adoption of a fire code "could impact their operating costs."<sup>2</sup> Likewise, agricultural interests requested similar exemptions "for any building or structure that is used for an agricultural operation, as defined Section 251.002 of the Texas Agricultural Code."<sup>3</sup>

## Fire Codes are a local option

Ironically, McLennan County, in which West Fertilizer was located, is one of the 81 Texas counties that already has the authority to adopt and enforce a fire code.

By law, any county with a population of over 250,000, or any county adjacent to a populous county, may adopt a fire code through an order of the commissioners court.<sup>4</sup> In fact, of the 81 counties that already have the local option authority to adopt a fire code, only 20 — less than 8 percent of all Texas counties — have done so.

The provisions of a county fire code apply only to new structures, facilities, or operations; significant improvements; or changes in intended use or activity level that occur after the effective date of the code. Industrial facilities with a fire brigade are exempt from county fire code regulations.<sup>5</sup>

Only a handful of a fire code's provisions apply to existing structures, facilities, and operations that, in the opinion of the fire code official, constitute a distinct hazard to life or property. Thus, as an existing building or condition in a county with no fire code official, West Fertilizer would not have been required to come into compliance with current fire codes, even if a fire code had been in place the week before the fatal fire.

## Counties already have the authority to correct fire and life safety hazards

Despite the limited authority of counties to adopt a county fire code, every county already has the authority to protect public welfare and safety. Every county has the authority — without a fire code — to review plans, conduct inspections for fire and life safety hazards, require their correction, and impose penalties for non-compliance.<sup>6</sup>

All it takes is a decision by the Commissioners Court to appoint a county fire marshal, establish a fee schedule, and direct the fire marshal to review plans, inspect for fire and life safety hazards, and order their correction in unincorporated areas of the county. However, only a handful of Texas counties have appointed a county fire marshal. By way of comparison, every county in Texas has a County Sheriff, but only 56 counties — just over 22 percent — have appointed a County Fire Marshal.

A county does not need to adopt a fire code to do this. In fact, without a fire code, the only authority the county loses is the authority to issue building permits and certificates of compliance.<sup>7</sup>

In the absence of a county fire code, State law allows a county fire marshal to conduct an inspection “using any nationally recognized code or standard adopted by the state.”<sup>8</sup> This change was incorporated into law specifically to assist counties that do not have the statutory authority to adopt and enforce a county fire code. Codes adopted by the State include:

- Texas Department of Insurance, State Fire Marshal's Office
  - NFPA 1, Uniform Fire Code for State-required inspections.
  - NFPA 101®, Life Safety Code®, 2012 Edition for the design, construction, and operation of occupied buildings.
  - Various NFPA codes and standards for guidance in assessing and directing remediation of fire hazards for conditions not in occupied buildings
- Texas Department of Licensing and Regulation
  - NFPA 70, National Electric Code
  - IAMPO Uniform Mechanical Code
  - Industrialized Housing Standards, to include:
    - International Building Code,
    - International Energy Conservation Code
    - International Existing Building Code
    - International Fuel Gas Code
    - International Residential Code
    - International Mechanical Code
    - International Plumbing Code
  - Texas Accessibility Standards
  - Elevator and Escalator Standards: ASME A17.1, A17.3, A18.1, and A21

## Options for counties without a county fire marshal

In any county where there is no County Fire Marshal, the county has four other options available to identify and correct fire and life safety hazards in unincorporated areas. Each is a local option and may be enacted within the existing discretionary authority of the commissioners court.

**Request assistance from the State Fire Marshal.** Upon complaint or request, the State Fire Marshal has the authority to enter any commercial or public building, examine the premises for fire or life safety hazards, and require the correction of dangerous conditions. An owner or occupant is required to comply with a state fire marshal's order or face legal action.<sup>9</sup> Feasibility of this option needs to be considered in light of limited State resources.

**Contract with another local government.** A county may agree to contract with another local government for the provision of fire marshal and other services.<sup>10</sup> The restrictions on adoption of a code fire still apply, but all other options, including reimbursement for services provided, are based on State law and the terms of the contract.

**Declare a public nuisance.** Counties can require a property owner to abate, or correct, a public nuisance if a building is maintained in a manner that creates a hazard to safety, health, or public welfare because it is a fire hazard.<sup>11</sup> This option can be a lengthy process, could require extensive legal action, and may be too costly or cumbersome to utilize in lieu of a county fire inspections by a county marshal.

**Transfer responsibility to Emergency Service District(s).** Emergency Services Districts, or ESDs, are special districts established to provide emergency services within the boundaries of the district. According to one source, there are 355 emergency service districts operating in 95 counties.<sup>12</sup>

In the absence of a county fire marshal, an ESD has similar authority to appoint a district fire marshal, review plans, conduct inspections for fire and life safety hazards, require their correction, impose penalties for non-compliance, adopt a fire code, and commission peace officers.<sup>13</sup> The two primary differences are the transfer of authority (and responsibility) to the district and source of funding. With an ESD fire marshal, the fire marshal is directly responsible to the ESD Board of Commissioners rather than to the Commissioners Court. Funding is from taxes and fees collected by the ESD. Collectively, ESDs in Texas collected over \$503 MM in property tax alone in 2019.

## Sensible solutions require balance

Current law provides every county with the options necessary to determine the degree of fire prevention that is best suited for its needs. Populous counties may adopt model fire codes, with local amendments, to meet the needs of large or rapidly-growing communities. More rural counties may adopt less stringent measures, yet have the flexibility to address specific concerns.

This is not to say that adoption and enforcement of local fire codes are not needed. Similar codes could reduce fire risk, simplify understanding, and reduce confusion among property owners, developers, and regulatory officials alike. However, good intentions sometimes lead to bad legislation, unfunded mandates, and difficulties with enforcement. That is not to say that any of the proposed legislation was necessarily "bad," it just suggests that we take look at all available options before adding new laws.

## Special situations require special solutions

There are some situations that require legislative change or adoption of fire codes. Examples include high-hazard occupancies and high-risk residential occupancies. In these cases, adoption of a fire code is recommended simply because model fire codes contain language that deals specifically with these situations, and provide the additional authority needed to enforce standards.

High-hazard occupancies are those that pose a high risk to life and property because of the presence of potentially-dangerous chemicals, hazardous storage, or hazardous work processes.

Likewise, high-risk residential occupancies are those that pose a high risk to life and property because of lack of regulation and limited fire/life safety protection features. High-risk residential occupancies include unlicensed group homes and assisted-living facilities. Many of these have been converted from single-family dwellings, or repurposed warehouse or other commercial spaces, that have never been subject to fire code design or inspection, and lack necessary features such as code-compliant means of egress, fire detection and alarm systems, and automatic fire sprinklers.

## References

- <sup>1</sup> Dallas Morning News. "Texas prohibits nearly 70 percent of its counties from having a fire code", published May 25, 2013; updated May 26, 2013. Accessed March 23, 2015.
- <sup>2</sup> Glasshouse Policy. "POLICY SOLUTIONS FOR THE 84TH TEXAS LEGISLATURE: Statutory changes regarding the adoption of fire codes in certain Texas counties", report published March 16, 2015. Accessed March 23, 2015.
- <sup>3</sup> Glasshouse Policy report, published March 16, 2015; accessed March 23, 2015.
- <sup>4</sup> Texas Local Government Code, Subchapter C, Section 233.061.
- <sup>5</sup> Texas Local Government Code, Subchapter C, Section 233.061.
- <sup>6</sup> Texas Local Government Code. Section 352, Subchapter B, Section 352.016 et seq.
- <sup>7</sup> Texas Local Government Code, Subchapter C, Section 233.063.
- <sup>8</sup> Texas Local Government Code. Section 352.016 (b). adopted to be effective September 1, 1987; amended to be effective September 1, 2003.
- <sup>9</sup> Texas Government Code. Section 417.008
- <sup>10</sup> Interlocal Cooperation Act, Tex. Gov't Code Ann. §§ 791.001 -791.030
- <sup>11</sup> Texas Health & Safety Code, Subchapter B, Section 343.011.
- <sup>12</sup> "Special District Rates and Levies", Texas Comptroller of Public Accounts, Published July 2020. Accessed January 13, 2021.
- <sup>13</sup> Texas Health & Safety Code, Chapter 775, Subchapter F

## About the Author

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Mike Montgomery is a public safety consultant with over 30 years' experience in fire protection services and emergency management, including over 20 years as a chief officer. Experience includes the implementation of a county fire code and Type I hazardous materials response team, deployment to the World Trade Center, mega-shelter operations during Hurricanes Katrina and Harvey, and other operations during severe weather and wildfires. He has earned degrees in Fire Science Technology and Business Administration, holds several professional certifications and other credentials, is a long-time instructor, published author, and guest speaker, and serves on several planning committees for emergency response and homeland security.