

# Minnesota State Building Code Code Adoption Guide



# **Minnesota Construction Codes and Licensing Division**

## *Minnesota State Building Code Adoption Guide*

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## **PURPOSE OF THE STATE BUILDING CODE**

As established in Minnesota law, the primary purpose of the Minnesota State Building Code is to provide minimum standards to safeguard life and limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location, and maintenance of all structures and equipment specifically covered by the code in a municipality that adopts and enforces the code. The purpose of the code is not to create, establish, or designate a particular class or group of persons who will or should be especially protected or benefited by the terms of the code.

## **MAKE-UP OF THE MINNESOTA STATE BUILDING CODE**

The Minnesota State Building Code (SBC) is a compilation of various state rule chapters that regulate different parts of building construction. Although compiled as separate rule chapters, the compilation itself is identified as the Minnesota State Building Code. As part of the rule making process (for the SBC), national model codes are usually referenced for adoption. Some of the national model codes that make up part of the SBC include the *International Building Code*, the *International Residential Code*, the *International Mechanical Code*, the *National Electrical Code* and the *Conservation Code for Existing Buildings*. Minnesota also writes and adopts several of its own building construction codes. Examples of some of these rules include: the Administrative Provisions of the Building Code and the Manufactured and Prefabricated Building Codes.

**The Minnesota State Building Code contains the following documents:**

- **MN Rule 1300, Administration of the Minnesota State Building Code;**
- **MN Rule 1301, Building Official Certification;**
- **MN Rule 1302, State Building Code Construction Approvals;**
- **MN Rule 1303, Minnesota Special Provisions;**
- **MN Rule 1305, Adoption of the International Building Code;**
- **MN Rule 1307, Elevators and Related Devices.**
- **MN Rule 1309, Adoption of the International Residential Code;**
- **MN Rule 1311, Adoption of the Conservation Code for Existing Buildings;**
- **MN Rule 1315, Adoption of the National Electrical Code;**
- **MN Rule 1325, Solar Energy Systems;**
- **MN Rule 1335, Floodproofing Regulations;**
- **MN Rule 1341, Minnesota Accessibility Code;**
- **MN Rule 1346, Adoption of the Minnesota State Mechanical Code;**
- **MN Rule 1350, Manufactured Homes;**
- **MN Rule 1360, Prefabricated Structures;**
- **MN Rule 1361, Industrialized/Modular Buildings;**
- **MN Rule 1370, Storm Shelters (Manufactured Home Parks);**
- **MN Rule 4714, Adoption of the Uniform Plumbing Code;**
- **MN Rules 1322 (Residential) and 1323 (Commercial/other), Minnesota Energy Codes;**  
**and,**
- **MN Rule 5230, Minnesota High Pressure Piping Systems.**

## **Optional Building Code Rule Adoption Considerations:**

As part of the local adoption process (of the SBC), a municipality also has the choice of adopting any or all of the following **optional** Minnesota Rule Chapters:

- Chapter 1306 - Special Fire Protection Systems (with options);**
- 2006 IBC Appendix Chapter J - Grading  
(Part of the *International Building Code* - provides for regulations  
for grading and excavations.)**

Should any/all of these optional ordinances be adopted by a municipality, they must be adopted and administered without deviation or change.

## **Mandatory Statewide Building Code Rule Application:**

Seven of the rule chapters identified in the SBC are required to be enforced throughout the State of Minnesota - regardless of whether a local municipality has adopted the SBC - or not. Those seven rule chapters include:

- MN Rule 1302, State Building Code Construction Approvals;**
- MN Rule 1341, the Minnesota Accessibility Code;**
- MN Rule 4714, the Minnesota Uniform Plumbing Code;**
- MN Rule 1307, Elevators and Related Devices;**
- MN Rule 1315, the National Electrical Code;**
- MN Rule 1350, Manufactured Homes;**
- MN Rule 1360, Prefabricated Buildings; and,**
- MN Rule 1361, Industrialized/Modular Buildings.**
- MN Rule 5230, Minnesota High Pressure Piping Systems**

## **MINNESOTA SBC IS MANDATORY STATEWIDE STANDARD**

In 2008, the Minnesota Legislature passed legislation that establishes the State Building Code (SBC) as the minimum “construction standard” throughout all of Minnesota, including all cities, all townships, and all counties. The legislation does not specifically provide for or mandate local enforcement [of the SBC] by a municipality unless adopted by local ordinance. It does however create a level playing field for those in the construction industry by establishing the SBC as the standard for construction for all building and construction activity in the state, regardless of local code adoption status.

As the statewide “construction standard,” the SBC applies to all new construction, reconstruction, alterations or repairs in Minnesota. The statewide “construction standard” mandate does not affect local SBC adoption or SBC adoption options; it simply makes the SBC the standard for which all new construction is to be designed and constructed to. As such, construction litigation would be judged by use of the SBC as the minimum standard of requirements for all construction activity in the state. A municipality would still have to adopt the SBC [*at the local level*] to be directly involved in any administration, regulation, permitting, and/or enforcement of the SBC.

For more information on the statewide “SBC Construction Standard,” see MN Statutes 326B.121.

## **HISTORY OF THE STATE BUILDING CODE – MS 326B.121**

In the U.S., regulation of building construction is essentially a natural consequence arising from the experience of many years of tragedy brought about by fire, collapse, panic and the inadequacy of materials and construction methods. Historically, building codes have generally been based on accepted good standards of construction and contain provisions that are reasonable, practical and necessary to provide for a minimum degree of health and safety. With this in mind, Minnesota created the Construction Codes and Licensing Division (CCLD) and charged them with the task of developing and administering a State Building Code (SBC). The charge also included a prerequisite for adopting a nationally recognized model building code that would provide for consistent and uniform application of construction standards for use throughout the state. The chronology of the history is as follows:

- In 1971, Minnesota passed into law requirements that established the Minnesota State Building Code. The same law also stated that the State Building Code was to supercede all existing local building and construction codes and it mandated that no other building, fire or construction code be more restrictive than the Minnesota State Building Code. The idea behind this law was to provide for a single statewide code that afforded uniformity and consistency in building construction from one municipality to another. The law did not mandate adoption of the SBC; it only mandated its adoption in those municipalities that were already enforcing some kind of local building code.  
*[effective July 1, 1972 Chapter 561, Section 2 (16.83-16.87)]*
- In 1977, Minnesota law established that the Minnesota State Building Code be expanded to apply statewide. The law required that all municipalities adopt the SBC within a time period of one year (by January 1, 1978). Agricultural buildings were exempt from this mandate.  
*[effective January 1, 1977 Chapter 381, Section 2 (16.83-16.867)]*
- In 1979, Minnesota passed a law allowing revisions to the mandatory application of the statewide building code. Essentially, the new law allowed for an extension of time for local governments to formally adopt the SBC (to January 1, 1979). The law also gave non-metropolitan counties the option to hold a referenda to rescind the Minnesota State Building Code (except for provisions of the Minnesota Accessibility Code). The rescinding ability however, was only allowed for counties, not municipalities located within the county that had already adopted the code. The Minnesota State Building Code remained as the mandatory building code in the seven-county metropolitan area of the state.  
*[effective May 31, 1979 Chapter 287, Section 2 (16.868)]*
- In 1981, Minnesota passed another building code related law allowing those municipalities with populations of less than 2500 to decide whether or not they wanted to keep or exempt themselves from mandatory application of the Minnesota State Building Code (except for provisions of the Minnesota Accessibility Code) if they were located in a non-metropolitan county. This allowed smaller municipalities to opt out of the building code.  
*[effective May 29, 1981 Chapter 306, Section 1 (16.869)]*
- In 2008, Minnesota passed a building code related law that impacts all construction throughout the state. This new law made the Minnesota State Building Code (SBC) the statewide construction standard for the purposes of design and construction for all construction projects within the state. Although not enforceable by those communities that have not specifically adopted the code, the intent of the law was to create a more level playing field for all those involved in the industry.  
*[effective May 15, 2008 Chapter 322, Section 3, Subdivision 1a (16.62)]*

To that end, Minnesota Law directed that the building code be based on the application of scientific principles, approved tests, and professional judgment; and to the extent possible, that the code be adopted in terms of desired results instead of the means of achieving those results, avoiding wherever possible the incorporation of specifications or particular methods or materials. The law also mandated that the building code encourage the use of new methods and new materials.

***Through the adoption of a code, a building department is established for one primary purpose – to serve the public by insuring that the safety required by the various codes and rules become an accomplished fact.***

## **DIRECT BENEFITS OF ADOPTING THE BUILDING CODE**

Proper administration and enforcement of the State Building Code will positively increase the overall “quality” of a community in some of the following ways:

- **Provides consistent construction standards throughout the municipality.**
- **Provides the community a means to assure safe construction.**
- **Provides assurances to homeowners, financial institutions and secondary mortgage markets through sound construction regulation, thereby improving the “value” of their investment/risk.**
- **Provides for the integration of other construction related statutory obligations such as contractor licensing, professional design, accessibility codes, fire codes, elevator requirements, electrical codes, plumbing codes, etc.**
- **Provides the National Insurance Services Organization (ISO) an additional form of justification to consider reduced property insurance rates within the municipality.**
- **Provides for code administration services at the local level, which in-turn better serves your residents with direct “customer service.”**
- **Provides the ability to establish “fees for service,” thereby eliminating or minimizing any general fund obligation to pay for the service.**
- **Provides a cost effective manner in which to assure public protection and safety in local building construction.**
- **Provides construction standards and services that are consistent for state and federal partnerships involving local grants and loans.**

## INDIRECT BENEFITS OF ADOPTING THE BUILDING CODE

- **Helps to reduce or eliminate blight and substandard structures**
- **Assists in assuring continued usability, durability, and desirability of local building stock**
- **Helps to maintain property tax value within the community**
- **Provides a platform for the dissemination of local government information**
- **Helps create a positive identity for the local government by educating and informing the citizenry of correct facts and developments**
- **Helps to reduce formal differences between government and its clientele through direct communication and the sharing of information**
- **Directly protects the interests of the local government by ensuring the soundness of the municipalities' investments**

## CERTIFIED BUILDING OFFICIAL

Once a municipality adopts the State Building Code, a certified building official must be designated. There are three levels of certification available through the Construction Codes and Licensing Division; they include Building Official, Building Official-Limited, and Accessibility Specialist. An individual certified as a building official may administer the code for all types of projects for which a building permit is required. An individual certified as a building official-limited may administer the code only for residential buildings containing one or two dwelling units and for any structure that is exempt from the requirements of design by a licensed design professional (i.e., Architects, Engineers, etc.). An accessibility specialist is certified only to administer the Minnesota Accessibility Code. All certified building officials, limited building officials and accessibility specialists are required to be re-certified every two years upon satisfactory completion of the required continuing education.

In terms of the “person,” the building official must also be a good administrator as well as a code technician. As such, the building official must have the ability to organize, plan, coordinate, train, direct, control, review and represent the municipality as its local expert in the field of code administration. In doing so, quality code administration and enforcement also demands that the building official be responsible for having a good rapport with the people of the community. It’s important to work to close the gap between “what it is” and “what it should be” by building a relationship between the building official and their customers.

***Every employee  
represents the local  
government;  
to some people he or she  
is the local government.***

## **PROVIDING BUILDING INSPECTION SERVICES**

Building inspection services can be provided in a number of ways. One method includes the direct hiring of a certified building official or a building official-limited as an employee. Under this option, the city has direct access to the employee and the responsibility to set up a functional building department right in city hall. Another option is to hire a certified building official or limited building official by contract. This method allows the municipality the flexibility to re-evaluate the services provided on a yearly basis. Yet another option includes the direct contracting of building department services with a private consulting firm that specializes in providing the services of a certified building official and building department staff. This provides all the same benefits of contracting with an individual contract inspector, but is usually used when a more detailed service is desired and when the volume of work may exceed the capability of one individual. An entirely different alternative may be to consider sharing the services of a building official with another governmental entity. This can be accomplished by contracting services through a joint powers agreement. This option can usually be considered when an adjacent municipality has already adopted the code and has adequate staffing levels to deal with the additional workload.

There are a number of issues that need to be considered when trying to determine which form of building department service (hiring direct or contracting out) is right for your community. Service expectations, volume of construction, costs, etc., all add to the number of variables that must be considered when making this decision.

## **BUILDING DEPARTMENT ADMINISTRATION**

It's not until the start-up of a new building department that the work of an experienced building official can be appreciated. There are many things that need to take place to make the transition into code enforcement a smooth process. Initially, start-up processes include the purchasing of all necessary code books and handbooks, creating permit application and permit forms, developing and adopting local fee schedules, the development of daily and monthly permit and inspection record documents, creating address or project files, creating construction handouts and developing department policy and procedure manuals. This represents just a few of the tasks that must be initiated in a new code jurisdiction.

A building official will be directly responsible for the review of plans, issuing permits and making necessary field inspections. In doing so, the building official may also be responsible for coordination of other city activities such as local housing or property maintenance codes and/or local zoning ordinances. Responsibilities will also include regular permit accounting, monthly reporting and coordination of activities with the local fire marshal and/or public works staff.

### ***WHAT IS A BUILDING CODE?***

***Practically..... It's a jurisdiction's official statement on the minimum required level of building safety expected for the community.***

***Technically... It's a collection of minimum safety standards arranged in a systematic manner for easy reference addressing all aspects of building construction – Fire, Building, Plumbing, Mechanical, Electrical, Energy, Accessibility, etc.***

## PERMITS

Permits are required for any owner or contractor who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure. A permit is also required to erect, install, enlarge, alter, repair, remove, convert, or replace any gas, mechanical, electrical, plumbing system, or other equipment when the installation is regulated by the code. A person wanting to do such work shall make application to the building official and obtain a permit prior to the beginning of any construction activity.

In addition to specifically indicating when a permit is required, the code also identifies those instances when a permit is not required. Whether a permit is required or not, the code does not allow the authorization of work to be done in any manner that would violate the code or any other law or ordinance of the jurisdiction. Examples of construction activity that is exempt from permitting includes:

- **A one-story detached accessory structure used as a tool or storage-shed, playhouse or similar use provided the floor area does not exceed 200 square feet in area**
- **fences not over seven feet in height**
- **oil derricks**
- **retaining walls that are not over four feet in height**
- **water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed 2 to 1**
- **sidewalks and driveways that are not part of an accessible route**
- **decks and platforms not more than 30 inches above adjacent grade, not attached to a structure with frost footings, and not part of an accessible route**
- **painting, papering, tiling, carpeting, cabinets, countertops, and similar finish work**
- **temporary motion picture, television, and theater stage sets and scenery**
- **prefabricated swimming pools accessory to a dwelling unit which are less than 24 inches deep, do not exceed 5,000 gallons, and are installed entirely above ground**
- **window awnings supported by an exterior wall of dwelling unit or garage or shed**
- **movable cases, counters, and partitions not over five-feet-nine-inches in height**

Additionally, plumbing, electrical, and mechanical permits **are not required** for the following construction activities:

- **portable heating, cooking, or clothes drying appliances**
- **the replacement of minor parts that do not alter approval of equipment or make equipment unsafe**
- **portable heating or ventilation appliances and equipment**
- **portable cooling units**
- **steam and hot or chilled water piping within any heating or cooling equipment regulated by code**
- **portable evaporative coolers and self-contained refrigeration systems containing ten pounds or less of refrigerant or that containing ten pounds of less or refrigerant or that are actuated by motors of one horsepower or less**

Plumbing permits are not required for the clearing of plumbing stoppages, provided the work does not involve or require the replacement or rearrangement of valves, pipes, or fixtures.

Should equipment replacement or repairs need to be performed in an urgent situation, a permit application can be submitted to the building official the next business day.

Application for a permit is not required for ordinary repairs to a structure. The repairs shall not however, include the cutting away of any wall, partition, or portion of a wall or partition, the removal or cutting of any structural beam or load bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include addition to, alteration of, replacement, or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring, or mechanical or other work affecting public health or general safety.

## **PLAN REVIEW**

On the surface, many believe that code enforcement is simply going to a construction site and inspecting construction activity in progress. If building code violations are found, orders are written and corrective action required. Simple as it sounds, this kind of code enforcement alone would actually add cost to most projects and serve the public interest poorly. In contrast, the idea of “plan review” is characterized by the building official’s ability to address code issues ahead of time, thereby providing a cost savings to the owner through a more effective construction schedule and the cost savings that might otherwise be used by making required on-site corrections after the fact. Plan review can also serve to promote a positive and more open form of communication between the building official and their customers.

Plan review takes time. It can range anywhere from a few minutes to an hour or two on most of the smaller residential types of projects. It can however, also take upwards of 20 to 40 hours per project on those larger commercial, industrial, or institutional types of projects. There may also be added time resulting from required changes or correspondence exchanges between the building official and a designer or building owner. In terms of the complexity of a project, the building official may even opt to contract out a portion or even all of the plan review to a third party. For some types of projects, construction plan review may need to be handled by a state or federal agency beforehand too. Examples of this may include public school district projects in excess of \$100,000, hospitals or nursing home projects, and other state owned or state licensed facility projects. In some cases, state and/or federal laws may mandate other governmental agency review in addition to any local government review procedure. An example of this would be those commercial and/or multi-family dwelling projects where the plumbing plans must be reviewed and approved by the Minnesota CCLD – Plumbing Code Unit before a plumbing permit can be issued. Because of the time and complexities involved with plan review, a municipality may elect to collect plan review fees in addition to the actual building permit fee.

## CODE ADMINISTRATION FEES

Most commonly known as a “building permit fee,” there are many different fees that are often collected at the time of building permit issuance. These may include the building permit fee, plan review fee, and a state surcharge fee. In addition, other work may also require separate permits and fees. These may include electrical, plumbing, heating/mechanical, septic, and sewer and water fees. Minnesota Rule requires building permit fees to be established at a rate that is commensurate with the services being provided by the local building department. The rule also states that the fees are to be reasonable, fair, and proportionate to the actual costs of the services being provided. It is for this reason that the building code does not specifically identify or provide for a fee schedule to be used by a jurisdiction. Each municipality is to evaluate local costs associated with the enforcement of the code. From this local evaluation, a fee structure can be established to cover associated and related code enforcement responsibilities. Again, by Minnesota Rule, the fees are to be commensurate with the services required/provided; building permit fees may not be used as a tool to raise additional monies for the municipalities’ general fund.

Generally, building permit fees are required to be based on construction valuation and/or a fee for service. The code requires that an applicant provide an estimated construction valuation (to be verified by the building official) at the time of permit application. This valuation is then applied to a fee schedule that gets proportionately higher with higher construction values. It is usually justified in this manner due to the complexities involved with providing building department services. An example of this would be in comparing the amount of service required and provided for construction of a single family dwelling to the amount of service required and provided to a new hospital or school building. Without question, there is more code administration, plan review and inspection time dedicated to the construction of a hospital or school than there would be for a single family dwelling. Therefore, the intent of the fee schedule is to cover all related costs to the municipality for providing building code administration.

There are also many types of permit fees that are set as a fixed fee. Permits of this type usually include plumbing permits, mechanical permits, electrical permits, septic permits, sewer and water installation permits, moving permits, re-roofing and residing permits, etc.

*Where thrift is in its place, and prudence is in its place, .....there the great city stands.*

*Walt Whitman*

Plan review fees also need to be included and addressed in a municipal fee schedule. The building code has some specific criteria for establishing plan review fees, but it generally allows the municipality the flexibility to take local conditions into consideration. Other operational fees must be included in the building department fee schedule as well. They include fees for services like special investigation fees, penalty fees for starting work without a permit, re-inspection fees, plan-review fees for similar plans, fixed fees and associated permit refund policies.

## **STATE SURCHARGE FEES**

To defray the costs of administering the State Building Code (SBC), a state surcharge fee is imposed on all permits issued by a municipality. The state surcharge fee is remitted to the Construction Codes and Licensing Division (CCLD) and placed in a special revenue account under the direct supervision of the Commissioner of Labor and Industry; the municipality retains a percentage. The CCLD uses this money to meet the statutory obligations set forth by the legislature for administration of the State Building Code. Some of those obligations include:

- Adopt and updating of the rule chapters that make-up the State Building Code.
- Establish and implement a testing and certification program for building code officials
- Providing continuing education and training for building code officials, designers, building contractors and others working in the area of building codes
- Assist municipalities in adoption and administration of the SBC
- Provide plan review, inspection and code administration services on state projects and state licensed facilities in areas of the state where the code has not been adopted
- Inspect and administer elevator safety codes for public and private buildings in the state
- Administer and enforce Federal and State laws and rules for manufactured homes, IBC Modular Buildings and Prefabricated Structures.
- Provide guidance on the application the SBC through regular code consultation
- Facilitate the coordination of SBC requirements with other state agency rules and legislative proposals

All permit surcharge fees must be remitted to the state by each municipality. In addition, surcharge reports must be filed with the commissioner and directed to the attention of the State Building Official. The state surcharge applies to any permit that authorizes work regulated by the State Building Code. This includes building permits, plumbing permits, mechanical HVAC permits, electrical permits, sewer and water permits, etc. The state surcharge fee would not apply to other types of local municipal permits, such as those that would normally be issued for zoning, land use, engineering and/or conditional use permits, etc. The local municipality is responsible for overseeing accounting and remittance of state surcharge fees. Surcharge reporting forms and/or necessary computer software may be obtained by contacting the Construction Codes and Licensing Division, or by accessing our website at: <http://www.doli.state.mn.us>

## **OTHER REGULATIONS**

Most municipalities also have “other” codes and regulations that impact building projects. For instance, local zoning codes play a big role in the location, design and development of most every project. Zoning regulations are locally adopted rules aimed at regulating the uses in various districts, the size and height of buildings, exterior treatment materials and conditions, the location of buildings on the property, parking requirements, fences, lot sizes, density, etc. Additionally, in some developments, there may also be private restrictive covenants that affect building projects. Restrictive covenants however, are generally private agreements between developers, builders and property owners within a specific development and as a result, they are not enforced by the local municipality. Responsibility for the enforcement of these “other” codes however, is sometimes assigned to the building official because of their regulatory nature.

## **POLITICAL SUPPORT**

The implementation of any new ordinance requires strong political support, or compliance may be ineffective. This support can be achieved when there is a better understanding of the true function of the building code. Therefore, it is important that there be both work sessions for the governing body and public meetings where factual information can be shared about the State Building Code. The states' Regional Building Official's are especially prepared to attend meetings like this in order to give formal presentations, answer questions, or just be there "in case."

*Where council members, the mayor, and the chief administrator are proud of their city, this feeling will spread.*

*David S. Arnold*

Code administration should never be looked upon as being easy or painless. Regulatory enforcement has its drawbacks too. Many people resent regulation and any form of regimentation, especially when applied to their personal property. As such, when confronted with the unpopular characteristics of the codes' application, it will be in the strong and unanimous support for the code where the citizenry will find fairness and uniformity.

With proper political and administrative support and proper staffing and direction, code administration and enforcement can be developed into a responsive, proficient and respectable public service.

## **PUBLIC NOTIFICATION**

If the code is adopted within a community, the municipality should do whatever it can to inform and educate its citizens, businesses and local building contractors about the adoption and its benefits and processes. A proactive approach needs to be used. Inaccuracies and contradictions about the process and application must be avoided.

## **STATE BUILDING CODE ADOPTION PROCESS**

Adoption of the State Building Code is as simple as adopting any other local ordinance. The process works like this: (Also see MS 394.25)

- ❑ **Hold workshops and public meetings**
- ❑ **Advertise for a public hearing on the adoption of the building code**
- ❑ **Draft an ordinance (see our sample ordinances attached herein)**
- ❑ **Hold a public hearing and take political action (vote) on the ordinance proposal**
- ❑ **Set an effective date for the ordinance to become law**
- ❑ **Publish the ordinance in the official newspaper of the municipality**
- ❑ **Hire a State Certified Building Official to be the administrative authority for the code**
- ❑ **Send a copy of the newly adopted building code ordinance - and a completed building official designation form - to the Construction Codes and Licensing Division.**

## **OTHER CODE ADOPTION CONSIDERATIONS INCLUDE:**

➤ **Application of the building code for county-wide code adoption**

If a county were to adopt the building code, code application would be applied to all townships and unincorporated cities within the county. Townships may not rescind the State Building Code under this adoption process. Townships or cities within the same county can however, adopt the code themselves in the same manner the county does. Under this scenario, townships and cities would be mandated to enforce the building code with their own staff and/or in the same manner as mandated by the county.

Incorporated cities with a population under 2,500 persons are not required to adopt the building code. These cities are specifically exempt from applications of code enforcement by the county in which they are located in – even if the county has already adopted the State Building Code. These less populated/smaller incorporated cities would still have the right to adopt the code if they choose however, and formulate required code administration under their authority.

**[Minnesota Statutes 326B.121]**

➤ **Two-mile radius option around a jurisdiction that has adopted the building code**

Pursuant to Minnesota Statute 326B.121, Subdivision 2, part d, a city may by ordinance, and with permission of the adjacent township board(s), extend the enforcement of the building code to contiguous unincorporated territory not more than two miles distance from its corporate city limit in any direction. Once enforcement authority is extended extraterritorially by ordinance, the authority may continue to be exercised in the designated (2 mile radius) territory even if/when another city less than four miles distant later elects to adopt the code. After the extension, the city may enforce the building code in the designated areas to the same extent as if the property were situated within its corporate city limits. Enforcement of the code by the city outside of its jurisdiction commences on the first day of January in the year following the notice of the public hearing.

**[Minnesota Statutes 326B.121]**

➤ **Agricultural building exemptions**

Buildings meeting the definition of an “agricultural building” as defined in Minnesota Statute 326B.103 Subdivision 3, that are on “agricultural land” as defined in Minnesota Statute 273.13 Subdivision 23, are exempt from certain requirements of the State Building Code. Specifically, Ag buildings meeting this statutory provision are exempt from the requirement of a “building permit.” The local authority however, may still require some type of land use or zoning review, but a “building permit” (as would otherwise be required by the State Building Code) is not required. In addition, a “building permit” fee may not be charged or collected.

**[MS 326B.103, Subdivision 3, MS 326B.121, Subdivision 1, & MN Rule 1300.0120]**

## COMMON QUESTIONS AND ANSWERS:

- 1. If we choose to adopt the State Building Code (SBC), how much of a tax burden will this be to the taxpayers of our community?**
  - If the building code is adopted, a building fee schedule must also be developed and adopted. Building permit fees are considered user fees. This means only those that use the process (obtain permits) pay a fee for that service. Building permit fees need to reflect the municipalities associated costs relating to administration and enforcement of the building code, including staffing, transportation, public education, training, tools and equipment, etc. If fees are developed accordingly, there should be no additional tax burden placed on the general fund or the citizens of the community.
- 2. If we choose to adopt the State Building Code, can we modify the code by making local amendments or changes to it?**
  - **No.** State law prohibits local amendments to the State Building Code. No changes may be made to the content or application of the State Building Code.
- 3. If we choose to adopt the State Building Code, can we choose to adopt or enforce only the portions that we want or like?**
  - **No.** If the SBC is adopted, it may not be changed or amended in any way, nor can a municipality pick and choose which sections they want to enforce or not enforce. Once the SBC is adopted, the entire code would apply and must be enforced.
- 4. If we choose to adopt the State Building Code, is there a way for the council/town board or building official to grant waivers to persons grieved by a building code requirement?**
  - **No.** No person (including the building official) or board or commission may grant variances or waivers of any type to the State Building Code.
- 5. If we choose to adopt the State Building Code, will we still be able to require each person to submit their respective permit applications to the city council/town board for final approval?**
  - **Yes.** However, it is only the building official that can review and approve *building code* requirements and subsequently sign-off on and/or issue building permits. If such an application is construction related only and the work complies with the building code, the building official must issue a building permit. Other building permits may be denied (by the local board or commission) if the proposal does not comply with other local zoning codes or ordinances.
- 6. If we choose to adopt the State Building Code, will it require everyone to hire a licensed architect or engineer to draw-up construction plans?**
  - **No.** The State Building Code does not indicate or dictate requirements for when a licensed design professional is required - on any project. It does state that the building official may require a licensed design professional if they believe the proposed work involves complex engineering or special design features. Other state law does indicate when the involvement of licensed design professional is required. Generally, the building official will refer to those other state laws to determine when/if a licensed design professional must be involved.

**7. If we choose to adopt the State Building Code, what type of liability will this add to our jurisdiction?**

- You should contact your local legal council on this for specifics, but generally, as long as the building code is administered and enforced in good faith by the Building Official - and without malice in the discharge of the duties required by the code or other pertinent laws or ordinances - the level of liability should not be affected. If a contract agency is hired to handle building code enforcement in the jurisdiction, that contractor should be required to have and maintain regular insurance for this type of work.

**8. If we adopt the State Building Code, how much should we charge for a building permit fee?**

- Permit fees are to be determined and established by the local municipality. Permit fees must be established so that they cover all costs associated with administration and enforcement the State Building Code - to run a functioning building department. Permit fees can be developed on a “fixed fee” basis and on a construction “value” type of sliding fee schedule, or a combination of both. It is important to remember that the fees are being collected as a “fee for service,” and as such, they must be commensurate with the services being provided.

**9. If we adopt the State Building Code, can “extra” permit fee revenue be used to offset other general fund expenditures or balances in the local budget?**

- The State Building Code specifically requires that building permit fees be fair, reasonable and proportionate to the actual costs of the services for which the fee is being imposed (see MN Rule 1300.0160). Ideally, when a citizen purchases a permit, it is considered a “fee for service” charge that should be set-up to balance out at zero. Building permit applicants should not be charged additional or extra fees to support a municipalities’ general fund or other special interest projects undertaken by the municipality.

**10. If we adopt the State Building Code, can we use it to regulate building maintenance or nuisance conditions within our community?**

- The SBC can be used to regulate the abatement of hazardous buildings or structures. The SBC however, contains no provisions for regulating building maintenance or other nuisance conditions. These conditions must be addressed through separate local ordinances and/or zoning controls. Municipalities interested in this type of regulation could also consider adoption of a local building and property maintenance code to deal with problematic conditions of this type. (Also see question # 25.)

**11. If we adopt the State Building Code, how will it apply to agricultural buildings within our community?**

- Agricultural buildings on agricultural land (as defined by state statute) are specifically exempt from the requirements of the SBC. A building permit is not required, nor may a building permit fee be charged.

**12. If we adopt the State Building Code, can we have our designated building official be responsible for other ordinances and/or enforcement regulations within the community?**

- **Yes.** The municipality dictates the general responsibilities of the building official. Many municipalities also require the building official to oversee enforcement of local zoning codes, septic codes and/or property maintenance codes. The building official however, is the only person having the authority (certification) to administer and enforce the SBC.

**13. If we adopt the State Building Code, will the code require a homeowner to hire a building contractor or can they do their own work?**

- A homeowner can choose to do all or any portion of work they want on their own property/building(s). The building code does not require homeowners to hire building contractors.

**14. If we adopt the State Building Code, do we have to hire more staff or someone to become a building official?**

- Once the SBC is adopted, only a certified building official or a certified limited building official can administer and enforce the building code. A municipality can choose to hire an additional employee or they can choose to hire a consulting firm that provides the services of a certified building official. A municipality may also choose to contract these same services with an adjacent municipality that already has certified staff. Regardless of whom you choose or the method in which you provide the service, a certified building official must be designated by the jurisdiction to serve in this role.

**15. If we adopt the State Building Code, will building permits be required for temporary buildings or other outbuildings or structures?**

- The SBC has specific exemptions for certain buildings and/or structures. One must refer to the SBC for verification. As such, each case must be reviewed independently for correct application of the code. Generally, a building permit would not be required for a one-story detached accessory building less than 120 square feet in size. Agricultural buildings located on land defined as agricultural land are also exempt. A building permit would be required for a temporary building.

**16. If we adopt the State Building Code, will a person be required to obtain a building permit to replace a furnace or water-heater? Will a building permit be required for re-roofing, residing, window replacement or similar types of projects?**

- **Yes.** These types of projects are not exempt from permitting or the code. Some of these conditions are of the type where a “fixed” permit fee may apply. Inspection of this same permitted work is also always required.

**17. If we choose to adopt the State Building Code, will a person be required to upgrade their existing manufactured home to make it meet code?**

- Whether the SBC is adopted or not, Minnesota Statue 327B would require a manufactured home to meet the code that it was constructed to at the point of sale or lease. Responsibility for these mandates falls upon the owner and/or their legal representative. The municipality (or building official) is not involved in this process unless the necessary upgrades require a building permit.

**18. If we choose to adopt the State Building Code, can we use it to “zone-out” mobile/manufactured homes from our municipality?**

- **No.** The SBC does not regulate or dictate zoning requirements in a municipality. Zoning provisions however, may not discriminate against mobile/manufactured homes constructed after July 1, 1972 that comply with the construction code that they were built to. (See MS 394.25 and MS 462.357.)

**19. If we choose to adopt the State Building Code, will the code apply to a mobile home installation? Will the installation require a building permit?**

- **Yes.** Mobile/manufactured home installations do require a building permit. The SBC has very specific criteria for the installation, setting and securing of a mobile/manufactured home. Mobile/manufactured homes themselves must be constructed to either Federal (HUD) construction standards and/or state building codes and are inspected by third party inspection agencies where they are manufactured. The municipalities’ building official is responsible to verify this process by assuring that the building is “labeled” by the manufacturer and subsequently installed per code and the manufacturers’ installation requirements.

**20. When a building permit is issued, is an inspection always required on every project?**

- **Yes.** Some form of on-site compliance inspection is required whenever a building permit is issued. The SBC specifically defines inspections that are required. It also gives the building official the ability to require more specific conditions of inspection - or even the hiring of specialized inspectors for various complex building designs/elements.

**21. What is a “fixed fee” building permit and how does that compare to a “valuation based” building permit fee?**

- Fixed-fee permits are just that; the fee for an individual permit is a set fee, it does not change. The price for a fixed-fee building permit is always the same, regardless of who obtains the permit. Fixed-fee permits are usually used for smaller projects consisting of minimal time for the building inspector. A valuation based permit fee is generally used on larger projects where more time must be dedicated to the application and enforcement of the code due to the complexity of the project. It is that type of fee that fluctuates from a lower price to a higher price depending on the value of permitted construction activity.

**22. Why should the government be involved with (in the form of a building permit) me when I want to work on my property/house?**

- The building code protects many interests of the local government. With the average family moving once every seven to ten years, enforcement of the building code provides for sound construction that contributes to the strengthening of the value of the property; it provides minimum design standards for the local construction industry that help to level the playing field in the bidding and construction processes; it assures that required life-safety features are provided for and are operational. Arguably, it can be stated that what one person does on their property has the potential to affect the community as a whole; therefore, it can be said that the benefits of adopting the State Building Code are also benefits to the community as a whole.

**23. If the municipality decides to build a new building or do other construction on an existing municipal building, will the municipality be required to comply with the building code, obtain a building permit and pay building permit fees if the code is adopted?**

- The municipality may, by board or council resolution, exempt itself from regular building permit fees on municipal buildings within its jurisdiction. However, a building permit application must be recorded and a building permit must still be issued. All SBC requirements must also be met and every required inspection must be completed. The local board/council may not exempt itself from the code or the codes' requirements. (Note: The required state surcharge fee must still be charged and paid even if the building permit and/or plan review fee is dismissed by the board/council.)

**24. Can the local town board, city council, administrator, mayor, police or fire chief supersede the designated building official's building code interpretation or authority for enforcement action pertaining to the State Building Code?**

- **No.** Only the certified building official - or a certified limited building official - can administer and enforce the SBC. The certified building official may use others' experience and/or opinions in the formulation of their interpretation, but it is their responsibility (under their certification) to administer the provisions of the code. Once the building official renders an opinion [on the code] no one can supersede that decision. The code does however, allow for an appeals process.

**25. Does the State Building Code provide the building official with the authority to enter an existing building and require of building code upgrades?**

- The building official may not arbitrarily enter any existing building unless they have proper (legal) permission. Their primary authority extends to those projects that are legally permitted. Once a building becomes "existing" there could be elements that become "non-conforming" within a year or two after occupancy. The SBC recognizes this by allowing existing buildings and their construction to remain in their original state - under the code that they were built to - as long as they do not pose a hazard or become dangerous. However, the building official can cause any building to be re-inspected to determine that it has been maintained.

**26. If the State Building Code were adopted, what would the penalty be for starting construction without a permit? Can the designated building official write "tickets" for building code violations?**

- The municipality sets the fee schedule relating to SBC administration and enforcement. The fee schedule may include a penalty fee for starting work without a building permit. Generally, most jurisdictions set the fee for starting work without a building permit at double that of the regular permit price. The building code would allow the building official to write a citation, but to formally do so under Minnesota law requires that the municipality specifically designate citation-writing authority by local ordinance. Obviously, licensed peace officers carry this authority, but most jurisdictions also pass this authority along to the local city/town administrator, planning and/or zoning director, public works director, building official and fire marshal.

**27. Does the State Building Code require all construction lumber to be “grade stamped;” and will locally sawn lumber (non-grade-stamped) be allowed for use if we adopt the State Building Code?**

- Generally, yes. Construction lumber for most projects regulated under the scope of the SBC requires grade stamps. There are some exceptions for small utility/non-occupied types of buildings however.

**28. As a community, what kind of direct benefits will we see if we choose to adopt the State Building Code right now?**

- Building code regulation provides the municipality with an effective manner in which to assure public protection and safety in local building construction. Code enforcement can also help to reduce or eliminate blight and substandard structures and can assist in assuring desirability of the local building stock.

**29. If we choose to adopt the State Building Code right now, will we be required to hire additional support staff - in addition the designated building official - for proper enforcement of the building code?**

- **Not necessarily.** Staffing requirements will vary based on the anticipated workload. In many instances, the designated building official is the only “new” staff required. Required clerical work may be handled by the building official or by existing staff. If building code enforcement is contracted out to a private company or another adjacent jurisdiction, there may be no need for additional staff at all. In larger communities or counties, additional staff may be necessary.

**30. If we choose to adopt the State Building Code, will we also be required to adopt and enforce the State Fire Code - and subsequently hire a local Fire Marshal?**

- **No.** The SBC has no direct relationship with adoption or enforcement of the State Fire Code. Adoption of the SBC would not mandate the hiring of a fire marshal. The SBC and the Fire Code however, are companion documents and both must be used for certain applications of the SBC. The Department of Public Safety, through the State Fire Marshals office, administers the State Fire Code. Information on the State Fire Code can be obtained at:  
<http://www.dps.mn.gov/divisions/sfm/Pages/default.aspx>

# **SELF-PERPETUATING SAMPLE ORDINANCE - EXAMPLE**

Ordinance No. \_\_\_\_\_ Adopting the Minnesota State Building Code

**AN ORDINANCE ADOPTING THE MINNESOTA STATE BUILDING CODE. THIS ORDINANCE: PROVIDES FOR THE APPLICATION, ADMINISTRATION, AND ENFORCEMENT OF THE MINNESOTA STATE BUILDING CODE BY REGULATING THE ERECTION, CONSTRUCTION, ENLARGEMENT, ALTERATION, REPAIR, MOVING, REMOVAL, DEMOLITION, CONVERSION, OCCUPANCY, EQUIPMENT, USE, HEIGHT, AREA, AND MAINTENANCE OF ALL BUILDINGS AND/OR STRUCTURES IN THIS MUNICIPALITY; PROVIDES FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREOF; PROVIDES PENALTIES FOR VIOLATION THEREOF; REPEALS ALL ORDINANCES AND PARTS OF ORDINANCES THAT CONFLICT THEREWITH. THIS ORDINANCE SHALL PERPETUALLY INCLUDE THE MOST CURRENT EDITION OF THE MINNESOTA STATE BUILDING CODE WITH THE EXCEPTION OF THE OPTIONAL APPENDIX CHAPTERS. OPTIONAL APPENDIX CHAPTERS SHALL NOT APPLY UNLESS SPECIFICALLY ADOPTED.**

This municipality does ordain as follows:

**Section 1. Codes adopted by reference.** The Minnesota State Building Code, as adopted by the Commissioner of Labor and Industry pursuant to Minnesota Statutes chapter 326B, including all of the amendments, rules and regulations established, adopted and published from time to time by the Minnesota Commissioner of Labor and Industry, through the Building Codes and Standards Unit, is hereby adopted by reference with the exception of the optional chapters, unless specifically adopted in this ordinance. The Minnesota State Building Code is hereby incorporated in this ordinance as if fully set out herein.

**Section 2. Application, Administration and Enforcement.** The application, administration, and enforcement of the code shall be in accordance with Minnesota State Building Code. The code shall be enforced within the extraterritorial limits permitted by Minnesota Statutes, 326B.121, Subd. 2(d), when so established by this ordinance.

The code enforcement agency of this municipality is called the \_\_\_\_\_.

This code shall be enforced by the Minnesota Certified Building Official designated by this Municipality to administer the code in accordance with Minnesota Statutes 326B.133, Subdivision 1.

**Section 3. Permits and Fees.** The issuance of permits and the collection of fees shall be as authorized in Minnesota Rules Chapter 1300. Permit fees shall be assessed for work governed by this code in accordance with the fee schedule adopted by the municipality in i.e.: City Code #, Ordinance # etc. In addition, a surcharge fee shall be collected on all permits issued for work governed by this code in accordance with Minnesota Statutes 326B.148.

**Section 4. Violations and Penalties.** A violation of the code is a misdemeanor (Minnesota Statutes 326B.082, Subd. 16).

**Section 5. Building Code Optional Chapters.** Minnesota State Building Code, Chapter 1300 allows the Municipality to adopt by reference and enforce certain optional chapters of the most current edition of the Minnesota State Building Code.

The following optional provisions identified in the most current edition of the State Building Code are hereby adopted and incorporated as part of the building code for this municipality.

- 1.
2. *(Municipality must specifically identify optional provisions elected for code adoption here)*
- 3.

**Section 6. Effective Date of Ordinance.** The effective date of this Ordinance is \_\_\_\_\_.

**Signed:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Attest:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Reviewed By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**ACCESSIBILITY SAMPLE ORDINANCE - EXAMPLE**

Ordinance No. \_\_\_\_\_ Adopting the Minnesota State Building Code for Accessibility

**AN ORDINANCE ADOPTING THE MINNESOTA STATE BUILDING CODE FOR ACCESSIBILITY. THIS ORDINANCE: PROVIDES FOR THE APPLICATION, ADMINISTRATION, AND ENFORCEMENT OF THE MINNESOTA STATE BUILDING CODE FOR ACCESSIBILITY BY REGULATING THE ERECTION, CONSTRUCTION, ENLARGEMENT, ALTERATION, REPAIR, CONVERSION, OCCUPANCY, EQUIPMENT, USE, AND MAINTENANCE OF ALL BUILDINGS AND STRUCTURES IN THIS MUNICIPALITY; PROVIDES FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREOF; PROVIDES PENALTIES FOR VIOLATION THEREOF; REPEALS ALL ORDINANCES AND PARTS OF ORDINANCES THAT CONFLICT THEREWITH.**

This municipality does ordain as follows:

**Section 1. Application, Administration and Enforcement.** The application, administration, and enforcement of the code shall be in accordance with Minnesota Rules chapter 1300. The code enforcement agency of this municipality is called the \_\_\_\_\_. This code shall be enforced by the Minnesota Certified Building Official designated by this Municipality to administer the code in accordance with Minnesota Statutes 326B.133, Subdivision 1.

**Section 2. Permits and Fees.** Permit fees shall be assessed for work governed by this code in accordance with the fee schedule adopted by the municipality in **i.e.: City Code #, Ordinance # etc.** In addition, a surcharge fee shall be collected on all permits issued for work governed by this code in accordance with Minnesota Statutes 326B.148.

**Section 3. Violations and Penalties.** A violation of the code is a misdemeanor (Minnesota Statutes 326B.082, Subd. 16).

**Section 4. Building Code for Accessibility.** The Minnesota State Building Code for Accessibility, established pursuant to Minnesota Statutes 326B, is hereby adopted as the building code for accessibility in this municipality. The building code for accessibility is known as chapter 1341 of Minnesota Rules.

**Section 5. Effective Date of Ordinance.** The effective date of this Ordinance is \_\_\_\_\_.

Signed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Title: \_\_\_\_\_  
Reviewed By: \_\_\_\_\_  
Title: \_\_\_\_\_

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1/14/2016

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1-800-DIAL-DLI

# **MINNESOTA STATE BUILDING CODE CODE ADOPTION GUIDE**

*Construction Codes and Licensing Division  
Minnesota Department of Labor and Industry  
Code Administration & Regional Services Unit*

**MN Construction Codes and Licensing Division  
Department of Labor and Industry  
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