



**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

KRIS W. KOBACH
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

October 16, 2026

ATTORNEY GENERAL OPINION NO. 2026-10

Mark Engholm
Kansas State Fire Marshal
800 SW Jackson, Suite 104
Topeka, KS 66612

Re: Fire Protection—Fire Safety and Protection—Adoption of Rules and Regulations; Designated as Fire Prevention Code

Synopsis: Kansas municipalities may not adopt local fire codes that are less restrictive than the Kansas Fire Prevention Code. Cited herein: K.S.A. 31-133; 31-134; K.A.R. 22-1-1.

* * *

Dear Mr. Engholm:

As the Kansas State Fire Marshal, you ask whether municipalities may adopt local fire safety codes that are less restrictive than the Kansas Fire Prevention Code. We conclude that the answer is no.

The Kansas Fire Safety and Prevention Act¹ requires the State Fire Marshal to “adopt reasonable rules and regulations . . . for the safeguarding of life and property from fire, explosion and hazardous materials.”² These regulations “may incorporate by reference specific editions, or portions thereof, of nationally recognized fire prevention codes.”³ The rules and regulations adopted by the State Fire Marshal are known as the Kansas Fire Prevention Code.⁴

¹ K.S.A. 31-132 *et seq.*

² K.S.A. 31-133(a).

³ K.S.A. 31-133(b).

⁴ K.S.A. 31-134(b).

K.S.A. 31-134(b) provides that “[n]o municipality shall enact or enforce any ordinance, resolution or rule or regulation inconsistent” with the Kansas Fire Prevention Code.⁵ You explain that several municipalities have modified their local fire codes to be less restrictive than the Kansas Fire Prevention Code, and your question is whether this complies with state law.

I. K.S.A. 31-134(b) preempts local fire codes that are less restrictive than the Kansas Fire Prevention Code.

While the Home Rule Amendment to the Kansas Constitution empowers cities to “determine their local affairs and government,”⁶ cities remain subject to uniform state laws applicable to all cities.⁷ The Legislature therefore may expressly preempt municipal action with a uniformly applicable enactment.⁸ Even in the absence of express preemption, local legislation may not conflict with state law, unless the state law is nonuniform and the municipality adopts a charter ordinance or resolution.⁹

We identify no lack of uniformity in the Kansas Fire Safety and Prevention Act; it applies equally to all municipalities. In fact, K.S.A. 31-134(b) requires that the Kansas Fire Prevention Code “shall have uniform force and effect throughout the state.” The Act therefore expressly preempts “any ordinance, resolution or rule or regulation inconsistent” with the Kansas Fire Prevention Code.¹⁰

Since the Act applies uniformly, the next question is what fire safety rules are “inconsistent” with the Kansas Fire Prevention Code. “Inconsistent” can be defined as “not in agreement, harmony, or accord; incompatible.”¹¹ We believe this has the same meaning as the principle that local ordinances cannot conflict with uniform state law. The Kansas Supreme Court has held that a conflict exists when a local “ordinance permits or licenses that what [a state] statute forbids or prohibits that which the statute authorizes.”¹² There is no conflict, however, “where both an

⁵ However, K.S.A. 31-134(b) states that “nothing in this act shall be construed to impair the power of any municipality to regulate the use of land by zoning or fire district regulations or to prohibit or regulate the sale, handling, use or storage of fireworks within its boundaries.”

⁶ Kan. Const. Art. 12, § 5(b).

⁷ *Dwagfys Mfg., Inc. v. City of Topeka*, 309 Kan. 1336, 1340, 443 P.3d 1052 (2019). Although the Home Rule Amendment only governs cities, counties also “shall be subject to all acts of the legislature that apply uniformly to all counties.” K.S.A. 19-101a(a)(1).

⁸ *State v. Jenkins*, 295 Kan. 431, 437, 284 P.3d 1037 (2012).

⁹ *Id.* Counties may adopt charter resolutions under K.S.A. 19-101b, except as to “those limitations, restrictions or prohibitions set forth” in K.S.A. 19-101a.

¹⁰ K.S.A. 31-134(b).

¹¹ Webster’s New World College Dictionary 737 (5th ed. 2014).

¹² *Dwagfys*, 309 Kan. at 1344 (quoting *City of Junction City v. Lee*, 216 Kan. 495, 501, 532 P.2d 1292 (1975)).

ordinance and the statute are prohibitory and the only difference is that the ordinance goes further in its prohibition but not counter to the prohibition in statute.”¹³

Thus, the Kansas Supreme Court has held that an ordinance outlawing the carrying of both concealed and unconcealed weapons did not conflict with a state statute outlawing only the carrying of concealed weapons because the ordinance was “more restrictive” than the statute.¹⁴ But the Court has recognized a conflict in cases where municipal ordinances classified certain offenses as misdemeanors when the offenses were classified as felonies under state law.¹⁵ In other words, uniform state law establishes a minimum standard that must be met by any local legislation if a municipality intends to exercise concurrent jurisdiction, and a local ordinance or resolution that would undermine or weaken the standard set by uniform state law is beyond the power of a municipality to enact.

Applying those principles here, we conclude that less restrictive codes would be “inconsistent” with the Kansas Fire Prevention Code because they would permit what state law has prohibited.¹⁶ Therefore, while K.S.A. 31-134(b) allows municipalities to adopt fire codes that are more restrictive than the Kansas Fire Prevention Code, it prohibits them from adopting fire codes that impose less restrictive standards.

II. K.A.R. 22-1-1(b) does not authorize municipalities to adopt less restrictive fire codes.

Some interested parties have argued that K.A.R. 22-1-1(b), a provision of the Kansas Fire Prevention Code, authorizes municipalities to adopt fire codes less restrictive than those adopted by the State Fire Marshal. K.A.R. 22-1-1(b) provides: “Each alternate method of fire protection that has been approved by a local board of appeals as a substitute for strict compliance with code requirements shall be deemed to be in compliance with the Kansas fire prevention code.”

We understand that a “local board of appeals” is a body that is often created by a city’s adoption of national model codes, such as the International Fire Code or International Building Code.¹⁷ These boards hear appeals from administrative interpretations, orders, or decisions by local building officials and may approve project-specific alternatives to code requirements provided the alternatives meet the

¹³ *Id.*

¹⁴ *Id.* at 1344-45.

¹⁵ See *Jenkins*, 295 Kan. at 442 (thefts of property valued at less than \$1,000 by a person previously convicted of two or more thefts); *City of Junction City v. Cadoret*, 263 Kan. 164, 168, 946 P.2d 1356 (1997) (third and subsequent DUI offenses).

¹⁶ See *Dwagfys*, 309 Kan. at 1344.

¹⁷ See 2024 International Fire Code, § 112.1; 2024 International Building Code, § 113.1.

code’s life-safety intent.¹⁸ These boards are not legislative bodies that adopt fire codes for the municipality but rather adjudicative bodies that may determine on a case-by-case basis whether an “equivalent or better form of construction is proposed.”¹⁹

Thus, K.A.R. 22-1-1(b) only refers to the approval of case-specific alternatives that provide an equivalent level of fire protection and cannot be read as authorizing municipalities to adopt less restrictive fire codes. This understanding is further supported by K.A.R. 22-1-1(a), which provides:

When a municipality adopts one of the nationally recognized fire codes or the fire protection segment of a nationally recognized building code and modifies a section of that code, a summary of the modifications shall be submitted to the state fire marshal’s office. The modifications shall be reviewed and either approved or rejected by the state fire marshal.

This subsection addresses municipalities’ adoption of codes that differ from the codes adopted by the State Fire Marshal, confirming that subsection (b) addresses only case-by-case alternatives for specific projects. It would be incongruous to read subsection (b) as authorizing municipalities to adopt less restrictive fire codes when subsection (a) is clear that the State Fire Marshal must approve any local modifications to nationally recognized building and fire codes to ensure consistency with the Kansas Fire Prevention Code.

In conclusion, K.A.R. 22-1-1(a) provides no authority for municipalities to adopt local fire codes that are less restrictive than the Kansas Fire Prevention Code. Less restrictive fire codes are inconsistent with the Kansas Fire Prevention Code and are therefore preempted by K.S.A. 31-134(b).

¹⁸ See, e.g., *Building Code Board of Appeals*, Lenexa, KS (2026), <https://www.lenexa.com/Government/Boards-Commissions/Building-Code-Board-of-Appeals> (“The Board has the authority to approve the use of alternate materials, equipment and types of construction, if they are at least equivalent in quality, strength, effectiveness, fire resistance, durability and safety to those prescribed by the code.”); *Building Code Board of Appeals*, Leavenworth, KS, <https://www.leavenworthks.gov/bc-building-code-board-of-appeals> (“The Building Code Board of Appeals determines the suitability of alternate materials and methods of construction . . .”).

¹⁹ See, e.g., 2024 International Building Code, § 113.2; 2024 International Fire Code, § 112.2.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Dwight R. Carswell

Dwight R. Carswell
Deputy Solicitor General