STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
(615) 741-2199 FAX: (615) 741-4000

April 12, 2010 **VIA CERTIFIED MAIL**

Mr. Allen Medlock
Chief Building Official
6465 Mullins Station Road
Memphis, Tennessee 38130

Chief Ron Brown
Fire Marshal
2668 Avery Avenue
Memphis, Tennessee 38112

RE: **Exempt Jurisdiction Audit Report**

Dear Sirs:

I serve as legal counsel for the Codes Enforcement Division of the Department of Commerce and Insurance (hereinafter "Division").

I am following up on the March 16, 2009 letter from Terry Singleton (copy enclosed) regarding the exempt jurisdiction audit conducted by the Division which found Memphis/Shelby County is enforcing codes that are not in compliance with state statutory requirements. Our records indicate that your jurisdiction has not yet corrected the deficiency detailed in the audit report.

The Division understands updating codes is a complex and time consuming process; however, it has been more than one (1) year since Memphis/Shelby County was notified of the deficiency in its codes. This letter serves as the Division's request for an update on Memphis/Shelby County's progress to bring its codes into compliance with state statutory requirements and a timeline for completion of that process.

After the audit, the Division was asked, would the Department find Memphis/Shelby County's codes in compliance with state statutory requirements if Memphis/Shelby County were to adopt a local amendment permitting optional conformance with the 2009 NEHRP Recommended Provisions for Seismic Regulations for New Buildings and Other Structures (i.e. ASCE 7-10 Minimum Design Loads for Buildings and Other Structures) in lieu of the seismic provisions in the International Building Code?

Assistant Commission Pillow reviewed this request and determined that the Division would find a local amendment permitting optional conformance with ASCE 7-10 Minimum Design Loads for Buildings and Other Structures for EQ loads to be in compliance with state statutory requirements.

Thank you in advance for your attention to this matter. Please contact the Codes Enforcement Division at (615) 741-7190, or me at (615) 741-2199, if you require assistance or further information.

Sincerely,

Patrick W. Merkel
Chief Counsel for Fire Prevention and Law Enforcement

CC: A. C. Wharton, Jr., Mayor
City of Memphis
125 North Main Street
Memphis, TN 38103

Joe Ford, Interim County Mayor
Shelby County
160 North Main Street
Memphis, TN 38103

Louis Hawthorne, Memphis Fire Marshal
2668 Avery Ave.
Memphis TN 38112-4895

Kevin Massey, Memphis Fire Marshal
2668 Avery Ave.
Memphis TN 38112-4895

Kerry Litton, Shelby County Codes Supervisor
6465 Mullins Station Rd.
Memphis TN 38134

J. Carter S. Grey, Assistant County Attorney
6465 Mullins Station Rd.
Memphis TN 38134

Jim Pillow, Assistant Commission (e-mail)
Christopher Bainbridge, Director, Codes Enforcement (e-mail)
Al Hancock, Assistant Director, Codes Enforcement (e-mail)
Fred Garbler, DSFM, FSS Manager, Codes Enforcement (e-mail)
Audit Team Members: Terry Singleton (e-mail), Bud Fiedler (e-mail) and Jack Thaler (e-mail)

Enclosure

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
STATE FIRE MARSHALS OFFICE
DIVISION OF FIRE PREVENTION
CODES ENFORCEMENT SECTION
500 James Robertson Parkway
Third Floor
Nashville, Tennessee 37243-1162
615/741-7190
FAX: 615/253-3267

March 16, 2009

Mr. Allen Medlock, Chief Building Official
6465 Mullins Station Road
Memphis, TN 38130

Chief Ron Brown, Fire Marshal
2668 Avery Avenue
Memphis, TN 38112

RE: Exempt Jurisdiction Audit Report

Dear Mr. Medlock, and Chief Brown:

The State Fire Marshal is authorized by T.C.A. § 68-120-101 to conduct audits of local governments which choose to enforce its own codes pursuant to T.C.A. § 68-120-101(b) (2). The purpose of this audit is to ensure that the local government is adequately enforcing its codes, and is performing reviews of construction plans and specifications required under subsection (d), T.C.A. § 68-120-101 and inspections.

On February 19, 2009, audit team members Bud Fiedler, Deputy State Fire Marshal (DSFM); Jack Thaler, DSFM, Plans Examiner, and I conducted an audit of the codes enforcement program within your jurisdiction. We have determined that your jurisdiction has:

☐ Adequate Enforcement. This is the performance rating that is given to an exempt jurisdiction that has demonstrated during the audit process provided for herein that it is adequately performing its building code enforcement programs.

☒ Marginal Enforcement. This is the performance rating that is given to an exempt jurisdiction that has demonstrated during the audit process provided for herein that, although it is not adequately performing its building code enforcement programs, public safety is not jeopardized by such inadequate performance such that the danger to the public is imminent, or the exempt jurisdiction's adopted codes are not in compliance with statutory requirements.

☐ Inadequate Enforcement. This is the performance rating that is given to a locality that has demonstrated during the audit process provided for herein that it is not adequately performing its building code enforcement programs and that such failure may result in imminent danger to the public.

Here are the findings that led us to our determination:

Regarding seismic provisions, the Jurisdiction currently enforces the applicable Chapter(s) of the Standard Building Code, 1999 edition and locally adopted Ordinance, Appendix L.

~~T.C.A 68-120-101 list the codes allowed to be adopted by Exempt Jurisdictions, they are as follows:~~

T.C.A 68-120-101 states in part:

(b) (1) The standards established pursuant to subsection (a) apply to municipal, county, state and private buildings, unless otherwise provided by statute.

(2) Such standards do not apply to any building, other than state buildings, educational occupancies or any other occupancy requiring an inspection by the state fire marshal for initial licensure, located within the jurisdiction of a local government that certifies in writing to the state fire marshal that:

(A) It has adopted a building construction safety code consisting of the International Building Code, published by the International Code Council, Inc., and either:

(i) The International Fire Code, published by the International Code Council, Inc.; or
(ii) The Uniform Fire Code, published by the National Fire Protection Association, Inc., if adopted on or after July 1, 2006; and

(4) Notwithstanding subdivision (b)(2), the standards established pursuant to subsection (a) apply, if:

(A) The local government's building construction safety code publications are not current within seven (7) years of the date of the latest editions thereof, unless otherwise approved by the state fire marshal; or

Based on the above statutory requirements, the Exempt Jurisdiction must adopt the International Building Code (IBC), including seismic requirements of the IBC. The Law allows the Jurisdiction to adopt any edition of the code as long as it is within seven years of the date of the latest edition.

If, within sixty (60) days from the date of this report, the Exempt Jurisdiction adopts the International Building Code, including seismic requirements of the IBC, as required by T.C.A 68-120-101(b)(2)(A), the rating will be raised to "Adequate".

I. Audit Questionnaire (0780-2-19.05)

		Adequate	Marginal	Inadequate	N/A
A.	Organizational chart and resumes for enforcement program staff was submitted.	☒	☐	☐	☐
B.	Any staff changes that have occurred since the last audit was submitted.	☒	☐	☐	☐
C.	List of enforcement officials performing building and fire inspections was submitted.	☒	☐	☐	☐
D.	List of plans examiners who review and approve architectural and engineering design drawings was submitted.	☒	☐	☐	☐
E.	The person responsible for reviewing shop drawings of proposed fire protection sprinkler system installations, for reviewing shop drawings of proposed commercial kitchen hood and suppression systems, and for witnessing and inspecting fire hydrant flow tests, fire sprinkler system installations, fire alarm system or other fire protection systems was listed.	☒	☐	☐	☐
F.	Any local ordinances amending the adopted codes were supplied.	☒	☐	☐	☐
G.	When the adopted codes require compliance with other referenced codes or standards, they are enforced.	☒	☐	☐	☐
H.	The types of construction requiring plans and specifications to be submitted were listed. prior to the commencement of construction.	☒	☐	☐	☐
I.	Written records are kept for the building and fire codes enforcement program.	☒	☐	☐	☐
J.	The policy on archiving records was given.	☒	☐	☐	☐
K.	Is occupancy of, or change of occupancy in a building permitted before issuance of a certificate of occupancy.	☒	☐	☐	☐
L.	Conditions (if any) for a temporary certificate of occupancy were given.	☒	☐	☐	☐
M.	Limitations on the terms of a temporary certificate of occupancy were given.	☒	☐	☐	☐
N.	The policy regarding re-roofing projects was given.	☒	☐	☐	☐
O.	Concurrent reviews/inspections are performed with the state fire marshal.	☒	☐	☐	☐

II. On-Site Audit (0780-2-19-.06)

1) Plans Review

	Adequate	Marginal	Inadequate	N/A
A. Initial plans submittal and application	☒	☐	☐	☐
B. Plans Review	☒	☐	☐	☐
C. Other Local Agency Reviews	☒	☐	☐	☐
D. Plans Approval	☒	☐	☐	☐
E. Permitting	☒	☐	☐	☐
F. Field Inspections	☒	☐	☐	☐
G. The Exempt Jurisdictions Enforcement Process	☒	☐	☐	☐
H. Record Filing	☒	☐	☐	☐
I. Plans Archiving	☒	☐	☐	☐
J. Issuance of Occupancy Permits	☒	☐	☐	☐

2) Field Inspection:

The audit team conducted a field inspection of the Holiday Inn, located at 2751 New Brunswick to compare the approved construction documents with what was built to verify code compliance. Representatives from both the building official's office and the fire official's office accompanied our audit team during this inspection.

☒ ☐ ☐ ☐

III. Findings:

The Office of Memphis Fire Marshal and Shelby County Codes Enforcement is currently not meeting the requirements of TCA § 68-120-101(b)(2)(A); however, the enforcement program appears to meet the minimum requirements for plans review, permitting and inspection procedures.

The following items were noted on the plans reviewed in the office:

1. Design Intent for the sprinkler system was not shown on the design drawings.

The following items were observed during the on-site inspection:

1. The fire pump room was not provided with the one hour fire separation as required by NFPA 20, 2-7.1.1.
2. Flush handles on the handicapped toilets were mounted on the incorrect side.
3. Combustion and make up air was not evident in the room housing the 9 water heaters.

IV. Recommendations:

1. It is recommended the jurisdiction implement a separate design intent review and shop drawing review for sprinkler systems,
2. It is recommend the jurisdiction create a documentation reporting process for the field inspectors to insure the construction managers, owners, and designers are made aware of any findings that are field related.

V. Follow up:

Within sixty (60) days from the date of this letter, the Deputy State Fire Marshal for the Memphis/Shelby County area will contact the local jurisdiction to see what actions have been taken pertaining to the adoption of the International Building Code (seismic provisions) in accordance with T.C.A § 68-120-101(b)(2)(A).

Overall, Memphis/Shelby County has an effective codes enforcement program, with the exception of the currently adopted building code issue pertaining to seismic requirements. The staff was courteous and professional and we look forward to working with you in the future.

Respectfully,

Terry O. Singleton

Terry Singleton, Supervisor
Deputy State Fire Marshal
Audit Team Leader

CC: W. W. Herenton, Mayor
City of Memphis
125 North Main Street
Memphis, TN 38103

A. C. Wharton, Jr., County Mayor
Shelby County
160 North Main Street
Memphis, TN 38103

Louis Hawthorne, Memphis Fire Marshal,
2668 Avery Ave,
Memphis TN 38112-4895

Kevin Massey, Memphis Fire Marshal,
2668 Avery Ave,
Memphis TN 38112-4895

Kerry Litton, Shelby County Codes Supervisor,
6465 Mullins Station Rd,
Memphis TN 38134

Nashville (e-mail)
Patrick Merkel, Chief Counsel, Division of Fire Prevention (e-mail)
Joel K. Damons, Interim Director, Codes Enforcement (e-mail)
Al Hancock, Assistant Director, Codes Enforcement (e-mail)
Fred Garbler, DSFM, FSS Manager, Codes Enforcement (e-mail)
Audit Team Members: Bud Fiedler (e-mail) and Jack Thaler (e-mail)
Jackson File (e-mail)