

## Opt-In for Residential Inspections

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## Table of Contents

Opt-In for Residential Inspections .....	3
Opt-In: Exempt Cities .....	3
Opt-In: Non-Exempt Cities .....	4
Opt-Out Cities .....	4

## Opt-In for Residential Inspections

**Reference Number:** MTAS-1176

The Tennessee Clean Energy Future Act of 2009 took effect July 1, 2010. The act amended T.C.A. § 68-120-101, adopted energy efficiency standards and broadened statewide building standards to cover newly constructed one- and two-family dwellings in addition to municipal, county, state and certain private buildings.

The legislation created three classes of code enforcement across the state:

1. Exempt — These are cities where local building codes and local code enforcement meet state minimum standards. Exempt cities adopt and enforce their own building codes.
2. Non-exempt state enforcement (opt-in) — These are cities where local residential building codes and local residential code enforcement do not meet state minimum standards. Here, at the request of the city or upon the department of commerce and insurance's own initiative, the state will enforce state-adopted building codes.
3. Opt-out — These are cities that have passed a resolution exempting their jurisdiction from the applicability of state minimum standards for one and two-family dwellings. Cities can avoid state enforcement by adopting and enforcing codes that meet minimum state standards. However, where cities do not meet these state minimums, the state standards will apply as will state enforcement. Cities also have limited authority to opt out of the application the state standards in their jurisdictions.

## Opt-In: Exempt Cities

**Reference Number:** MTAS-1177

The goal of the legislation and the desire of the state entities charged with enforcing it are to encourage as many cities as possible to become exempt. Obtaining exempt status provides a city with the most local control of its own development and provides its residents with the highest level of protection and safety in new home construction, which helps maintain property values.

To be exempt under this law, a city must adopt and enforce minimum building codes. The specific pre-requisites for exemption are found in the state fire marshal's rules and regulations, but the general requirements are:

State enforcement remains limited to state buildings, educational occupancies and any other occupancy requiring inspection for initial licensure if the local government has chosen to adopt and enforce building codes for construction of all buildings, for construction of all buildings other than one- and two-family dwellings, or for one- and two-family dwellings only; and:

1. For one- and two-family dwellings, it has adopted the International Residential Code;
2. For construction other than one- and two-family dwellings it has adopted a building construction safety code consisting of the International Building Code and either the International Fire Code or the Uniform Fire Code, if adopted on or after July 1, 2006; and
3. The city is adequately enforcing its locally adopted building code and performing reviews of construction plans and specifications and inspections required by the state fire marshal. Requirements vary depending on the type of construction.

Furthermore, an exempt city's building code edition for one- and two-family dwellings must be current within seven years of publication unless otherwise approved by the state fire marshal. A city that meets and adequately enforces the aforementioned standards retains local control and is exempt from statewide codes and enforcement.

According to these requirements, a city may choose to adopt and enforce codes for specific buildings, and state enforcement will apply where the city is not regulating and enforcing. Therefore, within the exempt city classification, there will be a further breakdown of groupings. They are:

1. Cities that adopt and enforce codes for buildings other than one- and two-family dwellings. Here, the state will regulate residential construction with enforcement by deputy building inspectors.
2. Cities that adopt and enforce codes for one- and two-family dwellings only. Here, the state will regulate buildings other than one- and two family dwellings.
3. Cities that adopt and enforce codes for both one and two-family dwellings and other buildings. Here, the state will not regulate within the city's jurisdiction except state buildings, educational facilities, etc.

## Opt-In: Non-Exempt Cities

**Reference Number:** MTAS-1178

If a city cannot or decides not to adopt and enforce the minimum standards, the state will enforce the applicable statewide codes in the city. The commissioner of commerce and insurance is authorized to contract with local governments to use their employees for inspections of one- and two-family residences. These contracts allow inspectors to charge a fee as set out by the state fire marshal's fee schedule. Deputy building inspectors must be state certified as a:

1. Licensed building inspector;
2. Licensed plumbing inspector; or
3. Licensed mechanical inspector.

## Opt-Out Cities

**Reference Number:** MTAS-1179

Whether or not it is enforcing a locally adopted code or has no code at all, a city can completely avoid state regulation of one- and two-family dwellings in its jurisdiction by opting out of the statewide standards. This can be accomplished by a specific and recurring resolution process. This requires a city to pass a resolution by a two-thirds vote of the governing body exempting one- and two-family dwellings in its jurisdiction from the applicability of the statewide standards and to forward the resolution to the state fire marshal. The resolution, however, expires 180 days following the date of the next election. Therefore, each new governing body must pass a subsequent resolution to continue avoiding applicability of the state standards.

The counties and cities that have opted-out of the residential inspection program represent approximately 20 percent of the state's population. A list of the residential inspection program status [1] of all Tennessee counties and cities is presented later in this section.

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### Links:

[1] <https://www.mtas.tennessee.edu/reference/residential-inspection-status>

*DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.*

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