

Legal Q&A

By Lauren Crawford, TML Legal Counsel

Does an individual who acts as a building inspector for the city need a license from the state?

While each city may have its own set of qualifications for building inspectors, a building inspector need only be licensed by the state to perform plumbing inspection or fire safety inspections. The International Code Council also offers certification in several categories based on the International Residential Code, the International Building Code, and more. *See also* <http://www.iccsafe.org/Pages/default.aspx>.

If a city's building inspection includes a plumbing inspection, and the city does not choose to hire an independent plumber to perform that portion, the building inspector will need to be licensed under Texas Occupations Code Chapter 1301. TEX. OCC. CODE § 1301.351(b). An individual who performs a plumbing inspection without the proper license or an individual at a city who hires someone to do a plumbing inspection without the proper license commits a Class C misdemeanor. *Id.* § 1301.508. The requirements for becoming licensed as a plumbing inspector by the Texas State Board of Plumbing Examiners are outlined in the agency's administrative rules. 22 TEX. ADMIN. CODE §§ 361.1-367.14 (Texas State Board of Plumbing Examiners). *See also* <http://www.tsbpe.state.tx.us/applications-forms.html>.

If an individual performs fire safety inspections for the city, he or she must be commissioned as a fire inspector by the Texas Commission on Fire Protection. TEX. GOV'T CODE § 419.908. This statute, enacted in 2009 but only effective as of September 1 of this year, also requires that any fire safety inspection required by local ordinance be conducted in accordance with either the most recent local fire code adopted by the city council or the most recent fire code adopted by the state fire marshal. *Id.* The requirements for certification as a fire inspector by the Texas Commission on Fire Protection are outlined in Title 37 of the Texas Administrative Code, in Chapter 431. *See also* http://www.tcfp.texas.gov/certification/certification_overview.asp.

Is a city required to adopt certain codes as the city's building codes?

In 2001, the Texas Legislature adopted the 2001 edition of the International Residential Code and the National Electrical Code as the standard building codes for cities that choose to regulate residential construction in Texas cities. TEX. LOC. GOV'T CODE §§ 214-212-.214. The statute allows a city to make local amendments to the codes in order to best serve local needs. *Id.* § 214.212(c)(1). If a city chooses to adopt a building code other than the International Residential Code, the city must also adopt specific provisions for rehabilitation of buildings. *Id.* § 214.215. In 2005, the legislature adopted the 2003 version of the International Building Code as the statewide building code standard for commercial and multifamily buildings, and extended the National Electrical Code to commercial and multifamily construction, as well. *Id.* § 214.216. A city may make local amendments to this code, as well. *Id.* In addition, construction in Texas cities must comply with the Energy Efficiency Chapter of the International Residential Code for single-family construction and the International Energy Conservation Code for all other

construction. TEX. HEALTH & SAFETY CODE § 388.003. The statute authorizes the State Energy Conservation Office (SECO) to adopt more recent versions of the codes as the statewide standard, and SECO did so this summer, adopting the 2009 versions of the Energy Efficiency Chapter of the International Residential Code and the International Energy Conservation Code. *Id.* See also 34 TEX. ADMIN. CODE § 19.53 (Comptroller of Public Accounts, Building Energy Efficiency Performance Standards).

Can a city waive building inspection fees for certain types of construction?

Generally, waiving the building permit fee for an individual or organization would be prohibited by the Texas Constitution. As a general rule, a donation or gift by a city is prohibited by the Texas Constitution, art. III, §52, and art. XI, §3, which, in part, state that the legislature may not authorize any county, city, or other political subdivision of the state to lend its credit or grant public money or anything of value in aid of an individual, association, or corporation. A city may, however, choose to waive building permit fees as an economic development tool, as it is expressly permitted to do under Article 3, Section 52-a of the Texas Constitution. Many cities do waive these fees for non-economic development reasons for churches or school districts, but could only do so if the city council makes the determination that waiving the fee serves a valid municipal purpose. See *Barrington v. Cokinos*, 338 S.W.2d 133, 145 (Tex. 1960). If the council determines that the fee waiver accomplishes a valid municipal public purpose, a determination which is subject to judicial review, then arguably there is not a constitutional issue, because public funds are being spent to achieve a public purpose. See *id.*

There is one exception to this general rule: a city may waive fees related to the construction of buildings, including fees related to the inspection of buildings, in a neighborhood empowerment zone created by the city under Chapter 378 of the Texas Local Government Code. TEX.LOC.GOV'T CODE § 378.004.

Does a code enforcement official or other city employee need a search warrant to enter private property to inspect a substandard building or weedy lot?

The Supreme Court of the United States has held that it is vital for a public official to obtain a search warrant before entering private property, citing specifically the need to do so before a code enforcement inspection. See *Michigan v. Tyler*, 536 U.S. 499, 504-508 (1978). The Texas Code of Criminal Procedure specifically allows a magistrate to issue a search warrant to a city's code enforcement officer "for the purpose of allowing the inspection of any specified premises to determine the presence of a fire or health hazard or unsafe building condition or a violation of any fire, health, or building regulation, statute, or ordinance." TEX. CODE CRIM. PROC. art. 18.05. Such a warrant is often referred to as an administrative search warrant, and is required before entrance onto private property, even to collect purely visual, photographic, or other evidence from private property. If the inspection may be done entirely from public property, no warrant is required. It is important to note that such a warrant may only be issued to a city's code enforcement officer, rather than to an employee who performs code enforcement functions but is not licensed under Texas Occupations Code Chapter 1952. Alternatively, a TCLEOSE-certified police officer may utilize a broader search and seizure warrant, which is not specific to code

enforcement. *Id.*, art. 18.01. Failure to secure a search warrant before entering private property could create a violation of the prohibition of illegal search and seizure under the Fourth Amendment of the U.S. Constitution.

Is there a state agency that regulates homebuilders and inspects newly-built properties?

The Texas Residential Construction Commission was created by the Texas Legislature in 2003 to allow homebuilders and homeowners to resolve complaints about the construction process without going to court. The commission was abolished by the legislature through the sunset process during the 2009 legislative session. In that same legislative session, the legislature gave counties the authority to adopt the International Residential Code, with some restrictions. *See* TEX. LOC. GOV'T CODE §§ 233.151-.157. There is no state agency that regulates builders or inspects newly-built properties; that duty falls to the cities that choose to enact and enforce building codes.