

(f) A municipality having a local enforcing agency may establish by ordinance a different permit and certificate of smoke detector compliance fee schedule based on the actual cost anticipated or incurred for the enforcement of these Code provisions; provided, however, that the permit fee for the temporary use of a commercial farm building as a place of public assembly shall not exceed \$75.00.

Amended by R.1985 d.611, effective December 2, 1985.

See: 17 N.J.R. 1015(b), 17 N.J.R. 2870(a).

Deleted "not in excess of fees in Schedule (b) above".

Amended by R.1987 d.508, effective December 7, 1987.

See: 19 N.J.R. 1680(a), 19 N.J.R. 2266(a).

Added (a)5 through (a)33.

Emergency amendment, R.1989 d.404, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2126(a), 21 N.J.R. 2402(a).

Increased life hazard use registration fees and permit fees by approximately 15 percent.

Fee increases in (a) and (c).

Adopted concurrent proposal, R.1989 d.513, effective September 1, 1989.

See: 21 N.J.R. 2126(a), 21 N.J.R. 2402(a), 21 N.J.R. 3084(a).

Provisions of emergency amendment, R.1989 d.404 readopted without change.

Amended by R.1989 d.556, effective November 6, 1989.

See: 21 N.J.R. 2431(a), 21 N.J.R. 3453(a).

Established limit of no more than one \$115.00 fee for K-12 educational building, at (b).

Amended by R.1991 d.504, effective October 7, 1991.

See: 23 N.J.R. 2234(a), 23 N.J.R. 2999(a).

Fees increased.

Amended by R.1991 d.530, effective November 4, 1991.

See: 23 N.J.R. 2234(a), 23 N.J.R. 2453(a), 23 N.J.R. 3325(a).

Added (a)33.

Amended by R.1992 d.11, effective January 6, 1992.

See: 23 N.J.R. 3064(a), 24 N.J.R. 88(a).

Application fee added at (d).

Amended by R.1992 d.385, effective October 5, 1992.

See: 24 N.J.R. 2654(a), 24 N.J.R. 3519(a).

Exception to Type 4 permit requirements added at (c)4i.

Recodified from 5:18-2.8 and amended by R.1995 d.58, effective March 6, 1995.

See: 26 N.J.R. 4258(a), 27 N.J.R. 878(b).

Amended by R.1995 d.59, effective March 6, 1995.

See: 26 N.J.R. 4249(a), 27 N.J.R. 891(a).

Amended by R.1996 d.164, effective April 1, 1996.

See: 27 N.J.R. 2654(a), 28 N.J.R. 1833(a).

In (f) added the proviso.

Amended by R.1996 d.485, effective October 21, 1996.

See: 28 N.J.R. 2109(b), 28 N.J.R. 4577(b).

Amended by R.1996 d.501, effective October 21, 1996.

See: 28 N.J.R. 3853(a), 28 N.J.R. 4578(a).

Amended by R.1997 d.247, effective June 16, 1997.

See: 29 N.J.R. 967(a), 29 N.J.R. 2653(b).

In (a)32, changed fee from \$1,378 to \$450.

5:18-2.10 Enforcement procedures

(a) Whenever the fire official or the fire inspector observes a violation of a provision of this Code or locally adopted amendments the fire official shall prepare and serve on the owner a written notice of violation identifying the condition which is in violation, including the location, the appropriate Code section, and specifying time limits for the required repairs or improvements to be made. The notice shall contain or be accompanied by a written statement of the owner's right to appeal as set forth in N.J.A.C. 5:18-2.19.

(b) Time periods allowed for abatement of violations of this Code shall be as follows:

1. For any violation of N.J.A.C. 5:18-3, the fire official shall allow a minimum of 15 days.

i. The fire official may specify a time period of not less than three days where there is a dangerous condition that is liable to cause or contribute to the spread of fire or endanger the occupants.

2. For any violation of N.J.A.C. 5:18-4, the fire official shall allow a minimum of 30 days for abatement or the submission of a request for an extension, in accordance with (d) below.

(c) These time limits shall not apply to violations constituting an imminent hazard in accordance with N.J.A.C. 5:18-2.16 or to the revocation of permits in accordance with N.J.A.C. 5:18-2.7(f).

(d) The fire official may grant extensions of time whenever he shall determine that despite diligent effort compliance cannot be accomplished within the time specified in the notice.

1. No extension shall be granted unless it is requested in writing by the owner. A request for extension shall set forth the work which has been accomplished, the work that remains, the reason why an extension is necessary and the date by which the work will be completed.

2. An application for an extension shall be deemed to be an admission that the notice of violation is factually and procedurally correct and that the violations do or did exist.

i. An owner who inquires concerning an extension shall be informed of the provisions of (d)2 above.

ii. If the local enforcing agency provides forms for an application for extension, the provisions of (d)2 above shall be prominently printed on them.

(e) If the notice of violation is not complied with within the time specified by the fire official, the fire official shall institute the appropriate enforcement proceedings to restrain, correct or abate such violation or to require removal or termination of the unlawful use of the building or structure in violation of the provisions of this Code or of any order or direction made pursuant thereto.

(f) If the fire official determines that the Code cannot be adequately or safely enforced without police support, he or she shall request the police to provide assistance. If no assistance is forthcoming, he or she shall pursue formal action to address the situation and shall not use physical force.

(g) Any person, firm or corporation violating any of the provisions of the Code or failing to comply with any order issued pursuant to any section thereof, shall be subject to

the penalties provided in N.J.A.C. 5:18-2.12. The imposition of penalties shall not prevent the fire official from instituting appropriate action to restrain, correct or abate a violation; or to prevent illegal occupancy of a building, structure or premises; or to stop an illegal act, business or use in or about any premises.

Amended by R.1992 d.104, effective March 2, 1992.

See: 23 N.J.R. 3552(a), 24 N.J.R. 739(a).

Text at (a)1-10 deleted; reference to N.J.A.C. 5:18-3 added.

Amended by R.1993 d.195, effective May 3, 1993.

See: 25 N.J.R. 397(a), 25 N.J.R. 1872(a).

Old (d)1 deleted; new (d)1 and 2 added; authorized representative to follow required procedures.

Recodified from 5:18-2.9 and amended by R.1995 d.58, effective March 6, 1995.

See: 26 N.J.R. 4258(a), 27 N.J.R. 878(b).

Administrative correction.

See: 27 N.J.R. 2886(b).

Case Notes

Failure to present sufficient evidence that building was in compliance with sub-codes in force at the time of its construction. No. 1 Chinese Kitchen v. Fire Safety Bureau, 94 N.J.A.R.2d (CAF) 91.

5:18-2.11 Service of notice and orders

(a) Notice, rules, decisions and orders issued and served pursuant to the Act shall be effective if served by any one of the methods set forth below:

1. By personal delivery; or
2. By leaving the document at the addressee's office or dwelling unit with a person 14 years of age or older; or
3. By certified mail return receipt requested to the person's last known address; however, if the document is returned as "refused" or "unclaimed" with no indication of a change of address, service may be made by ordinary mail to the same address; or
4. If on an owner, by serving the document on the Secretary of State, who shall be deemed the owner's agent for service of process; if:
 - i. A certified mailing was returned; and
 - ii. A copy of the document is posted in a conspicuous location on the premises, which location shall include the walls in a front vestibule, common foyer or hallway near the inside main front entrance.

(b) The date of personal service or the third day after mailing shall be considered the date of service.

(c) A copy of any notice or order served upon the owner of a State-leased or owned property shall be sent to the Director of Property and Facilities Management, Department of Treasury.

Recodified from 5:18-2.10 and amended by R.1995 d.58, effective March 6, 1995.

See: 26 N.J.R. 4258(a), 27 N.J.R. 878(b).

5:18-2.12 Penalties

(a) The Commissioner or a local enforcing agency may assess, levy and collect penalties to ensure compliance with the Code. No penalty shall be imposed except upon issuance of a written order requiring abatement and the allowance of a reasonable specified period in which to comply, unless clear notice of the violation otherwise exists.

(b) The maximum penalty for any act or omission in violation of the Act or Code that is not enumerated in this subsection shall be \$5,000 per violation per day. Except as specified below, a violation of N.J.A.C. 5:18-3 or 4 shall subject a violator to a maximum penalty of \$500.00 per violation per day. Specific violations shall subject violators to penalties as follows:

1. Imminent hazard—punitive closure:

i. Failure to obey an imminent hazard order—a maximum of \$5,000 per day for each day that the failure continues.

ii. Failure to obey an order to close for fixed period of time issued pursuant to N.J.A.C. 5:18-2.17—a maximum of \$5,000 per day for each day that the failure continues.

2. Egress:

i. Blocking, locking, or obstructing required exits in a place of public assembly or education—a maximum of \$5,000 per occurrence;

ii. Blocking, locking, or obstructing required exits in any other place—a maximum of \$2,500 per occurrence.

3. Occupancy:

i. Exceeding the maximum permitted occupancy in a place of public assembly or education;

(1) For the first offense—a maximum of \$2,500;

(2) For a subsequent offense—a maximum of \$5,000;

ii. Exceeding the maximum permitted occupancy in any other place;

(1) For the first offense—a maximum of \$500.00;

(2) For a subsequent offense—a maximum of \$2,500.

4. Fire protection equipment:

i. Failure to install a required suppression or detection device after having been given written notice of the requirement to do so:

(1) In a place of public assembly or education—a maximum of \$2,500 per violation per day;

(2) In any other place—a maximum of \$1,000 per violation per day.

ii. Disabling or decreasing the effectiveness of any fire suppression or alarm device or system.

(1) In a place of public assembly or education—a maximum of \$5,000 per occurrence;

(2) In any other place—a maximum of \$1,000 per occurrence.

5. Failure to comply with a lawful action:

i. A negligent or inadvertent failure to comply with a lawful order, ruling, notice or other action of the Commissioner or a local enforcing agency—a maximum of \$2,000 per occurrence.

ii. A refusal or deliberate failure to comply with a lawful order, ruling, notice or other action of the Commissioner or a local enforcing agency—a maximum of \$5,000 per occurrence.

6. Obstruction:

i. Anyone who obstructs, hinders, delays or interferes by force or otherwise with the Commissioner or any member of a local enforcing agency in the exercise of any power or the discharge of any function or duty under the provisions of this Code—a maximum of \$2,500 per occurrence.

7. Permits:

i. Failure to obtain a required permit prior to commencing the operation, process or activity for which a permit was required—a maximum of double the amount of the applicable permit fee.

ii. Failure to obtain a required permit after being ordered to do so while continuing the operation, process or activity—a maximum of \$5,000 per day during which the operation, process, or activity continues.

8. Registration:

i. Failure to file a registration application after having been ordered to do so—an amount equal to double the applicable registration fee, but not less than \$200.00 or more than \$1,000 for each registration.

ii. Failure to pay the required annual registration fee when due—an amount equal to the unpaid fee. Payment of the fee after imposition of the penalty shall not absolve the owner from responsibility for the penalty nor shall payment of the penalty be deemed to absolve the owner from the obligation to pay the fee.

iii. Failure to obtain a Certificate of Carnival Registration—an amount equal to double the applicable registration fee.

9. False statements:

i. Preparing, uttering or rendering any false statement, pertaining to reports, documents, plans or specifications permitted or required under the provisions of this code—a maximum of \$5,000.

ii. Submission of a materially false application for a permit or registration—a maximum of \$1,000 per occurrence.

10. Special hazards:

i. For any violation of N.J.A.C. 5:18-3 or 4 of this Code which is not specifically enumerated above but which, under the circumstances, presents a specific hazard to life—a maximum of \$5,000 per violation per day. The violation notice must set forth the basis for determining the basis for a special hazard.

(c) Each day during which the violation remains unabated after the date or time specified in the order or notice for its correction or termination shall constitute an additional and separate violation.

(d) The filing of a timely appeal shall stay the action until a decision is made by the construction board of appeals or the Commissioner, as the case may be.

(e) A violation that is recurring justifies imposition of an immediate penalty without the necessity for an interval in which correction can be made. A violation shall be deemed to be a recurring violation if a notice has been served within two years from the date that a previous notice was served and the violation, premises and responsible party are substantially the same.

(f) If a penalty order has not been satisfied by the 30th day after its issuance, the Commissioner or local enforcing agency may institute a civil penalty action by a summary proceeding under the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.) in the Superior Court or municipal court.

1. A person who fails to pay immediately a money judgment rendered against him may be sentenced to imprisonment by the court for a period not exceeding six months, unless the judgment is sooner paid.

2. All moneys that are recovered as a result of the assessment of penalties shall be paid into the designated trust account and shall be appropriated to support the local enforcing agency's operation.

(g) The Commissioner or fire official may offer to reduce any penalty provided that such reduction is in the best interest of fire safety and will assure compliance. No penalty reduction can be made final while the violation that led to its assessment remains in existence.

Amended by R.1985 d.611, effective December 2, 1985.

See: 17 N.J.R. 1015(b), 17 N.J.R. 2870(a).

(b)1 added.

Amended by R.1993 d.195, effective May 3, 1993.

See: 25 N.J.R. 397(a), 25 N.J.R. 1872(a).

Added new subsection (f); recodified old (f) to (g) and added (g)2.

Amended by R.1995 d.58, effective March 6, 1995.

See: 26 N.J.R. 4258(a), 27 N.J.R. 878(b).

Amended by R.1997 d.247, effective June 16, 1997.

See: 29 N.J.R. 967(a), 29 N.J.R. 2653(b).

Added (b)8iii.

Case Notes

City estopped from bringing action to summarily enforce penalty for fire code violations after informing building owner to appeal violation to fire marshal rather than to County Construction Board of Appeals. *State v. Kouvatias*, 292 N.J.Super. 417, 678 A.2d 1178 (A.D. 1996).

Serious-life-threatening fire safety violations warranted penalty assessment when violations remained completely unabated. *Irvington/66 v. Department of Community Affairs*, 95 N.J.A.R.2d (CAF) 83.

Assessment of penalty against landlord for fire code violations was justified; reduction of penalty contingent. *Davis v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 29.

Apartment owners were dilatory in obtaining permits and approvals for apartment's smoke detection system; In the Matter of 904 Atlantic Avenue, 94 N.J.A.R.2d (CAF) 18.

5:18-2.12A Dedicated and compensatory penalties

(a) When an owner has been given notice of the existence of a violation and has not abated the violation, that owner shall, in addition to being liable to the penalty provided for by N.J.A.C. 5:18-2.12, be liable to a dedicated penalty assessed pursuant to this subsection.

1. Whenever any penalty is assessed pursuant to N.J.A.C. 5:18-2.12, then a dedicated penalty in like amount shall be assessed pursuant to this section.

2. The amount of any dedicated penalty assessed pursuant to this subsection shall be in accordance with the standards set forth in N.J.A.C. 5:18-2.12(b), except that a dedicated penalty of up to \$50,000 for each violation may be assessed where there is a serious injury or loss of human life directly or indirectly resulting from any unabated violation.

3. Dedicated penalties assessed pursuant to the requirements of this subsection shall be assessed only once and shall not be assessed each day, as may be done in the case of penalties assessed pursuant to N.J.A.C. 5:18-2.12.

(b) All monies collected pursuant to this section shall be placed in a special municipal trust fund to be applied to the cost to the municipality of firefighter training and/or new firefighting equipment.

1. In the case where a fire district is the local enforcing agency, the funds shall be placed in the general treasury of the district subject to separate accounting and annual certification to the Department from the district chief financial officer.

2. In any case in which the enforcing agency is the Department, a county fire marshal, or an intermunicipal agency, all revenue from dedicated and compensatory penalties shall be paid into the fund maintained, in accordance with this section, by the municipality or fire district in which the building, structure or premises at which the violation occurred is located.

Amended by R.1993 d.195, effective May 3, 1993.

See: 25 N.J.R. 397(a), 25 N.J.R. 1872(a).

Rule retitled "Dedicated and compensatory penalties"; added (a)1-3 and (c)1; penalty upper limited specified as \$150,000.

Recodified from 5:18-2.17 and amended by R.1995 d.58, effective March 6, 1995.

See: 26 N.J.R. 4258(a), 27 N.J.R. 878(b).

5:18-2.13 Fire department costs

(a) An owner who has been given notice of a violation shall be responsible for a penalty not exceeding \$150,000 or the costs of suppressing any fire which directly or indirectly results from the violation, whichever is greater. To create an obligation, the violation need not have been the initial cause of the fire; it is sufficient if the violation's existence has increased the intensity of the fire or the difficulty of its extinguishment. This penalty is independent of any penalty issued in accordance with N.J.A.C. 5:18-2.12 for failure to abate the violation. Suppression costs may be imposed for a fire which occurs during the period allowed for abatement.

(b) The suppression costs shall include, but not be limited to, costs of labor, equipment and material incurred by municipalities, fire districts or fire departments involved in suppressing the fire, as well as any other actual expenses, including attorney fees, incurred for the collection of the penalty. If a compensatory penalty in excess of \$150,000 is sought, the cost of suppression shall be certified to the fire official of the area in which the fire occurred by the chiefs of the suppression units involved.

(c) The fire official shall serve notice on the owner and order payment. The notice shall state the violations justifying imposition of the penalty. If payment is not received within 30 days, the fire official shall pursue collection in the manner specified herein for penalties. The monies collected shall be paid to the municipalities or districts and appropriated in accordance with N.J.A.C. 5:18-2.12A(b).

New Rule, R.1995 d.58, effective March 6, 1995.

See: 26 N.J.R. 4258(a), 27 N.J.R. 878(b).

5:18-2.14 Variances

(a) Upon the application of a property owner or lessee with the consent of the owner, the fire official may grant a variance from the requirements of a regulation or standard adopted pursuant to the Act; provided, however, that no variance shall be granted unless it is determined that strict compliance would result in practical difficulty and that the variance, if granted, would not unreasonably jeopardize the safety of the occupants or intended occupants, fire fighters or the public generally.

1. In any facility subject to regulation by any State agency, no variance shall be granted except after consultation with that State agency.

2. Financial hardship alone shall not be grounds for a variance.

(b) An application for a variance shall be made in writing, shall be filed with the fire official and shall set forth the following information:

1. The requirements of the regulation from which a variance is sought;

2. The manner in which strict compliance with the regulation would result in practical difficulty;

3. The nature and extent of the practical difficulty; and

4. Feasible alternatives which would adequately protect the occupants or intended occupants, fire fighters and the public generally.

(c) Within 30 days after receiving an application for a variance, the fire official shall grant or deny the application in writing, stating the reasons for his action.

1. An application which is not granted within 30 days shall be deemed to have been denied.

2. A denial of an application for a variance may be appealed in the same manner as any other ruling of the fire official.

(d) Copies of all variance applications and records of the action taken on them shall be maintained as permanent public records by the fire official.

1. A fire official shall promptly provide the Division with copies of all decisions granting or denying variances after they have been rendered.

(e) Variations to requirements found in the Uniform Construction Code may only be granted by the Construction Official in accordance with the Uniform Construction Code.

Amended by R.1986 d.214, effective June 16, 1986.

See: 17 N.J.R. 1161(a), 18 N.J.R. 1260(b).

(e) added.

Amended by R.1993 d.628, effective December 6, 1993.

See: 25 N.J.R. 4363(a), 25 N.J.R. 5466(a).