

Amended by R.1995 d.603, effective November 20, 1995 (operative March 20, 1996).

See: 27 N.J.R. 2655(a), 27 N.J.R. 4699(a).

Amended by R.2005 d.446, effective December 19, 2005.

See: 37 N.J.R. 2747(a), 37 N.J.R. 4907(a).

Deleted former (b) and (c); added new (b); recodified former (d)-(f) as (c)-(e).

5:23-2.29 Entry

(a) The owner of any premises upon which a building or structure is to be constructed shall be deemed to have consented to inspection, by the enforcing agency, of the entire premises and of any and all construction being performed on it until a certificate of occupancy has been issued.

(b) An inspector, or team of inspectors, on presentation of proper credentials, shall have the right to enter and inspect such premises, and any and all construction thereon, for purposes of insuring compliance with the provisions of the applicable construction permit, and the regulations. All inspection pursuant to the act and the regulations shall be between the hours of 9:00 A.M. and 5:00 P.M. on business days, or when construction is actually being undertaken; provided, however, that inspections may be conducted at other times if the enforcing agency has reasonable cause to believe that an immediate danger to life, limb or property exists, or if permission is given by an owner, or his agent, architect, engineer or builder. No person shall accompany an inspector or team of inspectors on any inspection pursuant to the regulations, unless his presence is necessary for the enforcement of the regulations, or unless consent is given by an owner or his agent, architect, engineer or builder.

(c) Any construction official, subcode official or any inspector, presenting themselves for inspection of any occupied building shall present to the owner the owner's agent or occupant their personal identification as provided by the municipality.

(d) After the certificate of occupancy shall have been granted, the construction official shall not enter upon such premises for purpose of inspection, unless upon reasonable grounds to believe that a condition of the certificate of occupancy has been violated, or in the case of equipment granted approvals of limited duration pursuant to this subchapter, or in the case of emergencies, or unsafe buildings, or upon reasonable cause to believe construction work is underway without a permit having been issued.

(e) Nothing herein is intended to limit the right of a municipality to adopt property maintenance regulations and provide for inspection, pursuant to any other law, ordinance or judicial decision of this State. However, no such regulation shall conflict with any provision of the regulations.

Administrative Correction to (b): Changed "than" to "that".

See: 22 N.J.R. 2503(b).

5:23-2.30 Violation, notice and orders

(a) Whenever the construction official or the appropriate subcode official shall determine that there exists a violation of the provisions of the regulations or where there exists a violation of a permit or certificate issued under the regulations, the appropriate subcode official shall issue a notice of violation and orders to terminate directing the discontinuance of the illegal action or condition and the correction of the violation.

(b) The notice and orders shall contain at least the following information:

1. The name and address of the owner; the address at which the violation occurred; the name and address of the person to whom the order is directed, and if it be other than the owner, a copy shall be delivered to the owner or his agent stating that the owner bears joint responsibility for bringing about compliance with the person named and that if a penalty is imposed, the enforcing agency will not issue a certificate of occupancy until such penalty has been paid; the permit number; a citation to the sections of the regulations violated; an order to terminate violations within a time specified in the order; the amount of penalty assessed, if any, and if cumulative, an explanation of the method of computation; and shall be signed by the appropriate subcode official or the construction official.

2. Unless an immediate hazard to health and safety is posed, the construction official or appropriate subcode official shall permit such time period for correction as is reasonable within the context of the situation.

(c) Extensions: The construction 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. If, however, such extension shall be for a period in excess of three business days, or if more than one extension of less than three business days is sought, the construction official shall require a written application of extension stating the need, upon which he shall rule in writing, and which shall be made a part of the permanent file of the project.

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

In (a), deleted " or of a detailed statement or plan approved thereunder," following "provisions of the regulations".

Amended by R.2007 d.124, effective May 7, 2007.

See: 38 N.J.R. 3708(a), 39 N.J.R. 1669(a).

In (a), substituted "appropriate subcode" for "construction" preceding "official shall issue"; in (b)1, substituted "or" for "and" following "subcode official"; and in (b)2, inserted "official or appropriate subcode".

Administrative correction.

See: 39 N.J.R. 3296(a).

Case Notes

Penalty assessed against property owners for violations of housing code; failure to request an extension of time for reinspection. *Piercy v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 27.

5:23-2.31 Compliance

(a) If the notice of violation and orders to terminate have not been complied with, the construction official in addition to any other available remedies likely to bring about compliance, may request the legal counsel of the municipality, or of the joint enforcement agency, or the Attorney General in the case of the State, to institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation or to require the removal or termination of the unlawful use of the building or structure in violation of the provisions of the regulations or of the order or direction made pursuant thereto.

(b) Penalties:

1. Any person or corporation, including an officer, director or employee of a corporation, shall be subject to a penalty if that person:

- i. Violates any of the provisions of the act or the regulations;
- ii. Constructs a structure or building in violation of a condition of a building permit;
- iii. Fails to comply with any order issued by an enforcing agency or the department;
- iv. Makes a false or misleading written statement, or omits any required information or statement in any application or request for approval to an enforcing agency or the department.

2. Anyone who knowingly refuses entry or access to an inspector lawfully authorized to inspect any premises, building or structure pursuant to the act or the regulations, or who unreasonably interferes with such an inspection, shall be subject to a fine of not more than \$250.00.

3. With respect to (b)1iii above, a person shall be guilty of a separate offense for each day that he fails to comply with a stop construction order validly issued by an enforcing agency or the department and for each week that he fails to comply with any other order validly issued by an enforcing agency or the department. With respect to (b)1i and iv above, a person shall be guilty of a separate offense for each violation of any provision of the act or the regulations and for each false or misleading written statement or omission of required information or statement made in any application or request for approval to an enforcing agency or the department. With respect to (b)1ii above, a person shall be guilty of a separate offense for each violation of conditions of a construction permit.

4. No such penalty shall be assessed except upon notice of violation and orders to terminate and upon the expiration of the time period delineated in the notice; except that in the case of a false or misleading statement pursuant to (b)1iv above, the failure to obtain a construction permit or request required inspections, or allowance of occupancy prior to receipt of a certificate of occupancy, an order to

pay a penalty shall be issued immediately upon the discovery of the violation.

5. The construction official may separately serve a notice of penalty assessment and order to pay a penalty.

6. The penalties pursuant to this section may be collected pursuant to the "Penalty Enforcement Law of 1999" (N.J.S.A. 2A:58-10 et seq.). Jurisdiction to enforce such penalties is conferred upon judges of the municipal court and of the Superior Court. Suit may be brought by a municipality or the State of New Jersey. Payment of a money judgment pursuant hereto shall be remitted in the case of a suit brought by a municipality to the municipal treasurer and in the case of a suit brought by the State of New Jersey to the State Treasurer.

(c) The construction official may assess a monetary penalty whenever such shall be likely to assist in bringing about compliance.

(d) Stop construction order:

1. If the construction of a structure or building is being undertaken contrary to the provisions of the regulations, or other applicable laws or ordinances, the enforcing agency may issue a stop construction order in writing which shall state the reasons for such order and the conditions under which construction may be resumed and which shall be given to the owner or the holder of the construction permit or to the person performing the construction. If the person doing the construction is not known, or cannot be located with reasonable effort, the notice may be delivered to the person in charge of, or apparently in charge of, the construction.

2. If, at the time of inspections requested pursuant to N.J.A.C. 5:23-2.18(c), a pattern or practice is identified and documented in writing of the same code violation(s) occurring in most or all of the dwelling units inspected within a housing development, affecting framing, fire safety or structural safety, the construction official may issue a stop construction order for all buildings within the development. A copy of the supporting documentation, including the violations, citations, and blocks and lots, shall be given to the owner or responsible person in charge of the project. A copy of the stop construction order shall be forwarded to the Department as per N.J.A.C. 5:23-4.5(h)xi. Relief from any such stop construction order may be conditioned upon submission to the enforcing agency of an acceptable supervision and management plan. This plan shall include the institution of quality controls to ensure that the pattern of violations does not continue and the identification of qualified personnel to implement the plan. If the plan is not submitted within five business days of the issue date of the stop construction order, the order shall take effect.

3. No person shall continue, or cause to allow to be continued, the construction of a building or structure in violation of a stop construction order, except with the

permission of the enforcing agency to abate a dangerous condition or remove a violation, or except by court order.

4. If an order to stop construction is not obeyed, the enforcing agency may apply to the appropriate court as otherwise established by law for an order enjoining the violation of the stop construction order. The remedy for violation of such an order provided in this subsection shall be in addition to, and not in limitation of, any other remedies provided by law.

(e) Penalties may be levied by an enforcing agency as follows:

1. Up to \$1,000 per violation for failure or refusal to comply with any lawful order, unless the failure or refusal to comply is done with the knowledge that it will endanger the life or safety of any person, in which case the penalty shall be up to \$2,000 per violation;

2. Up to \$2,000 per violation for failure to obtain a required permit prior to commencing construction or for allowing a building to be occupied without a certificate of occupancy;

3. Up to \$2,000 per violation for failure to comply with a stop construction order;

4. Up to \$2,000 per violation for willfully making a false or misleading written statement, or willfully omitting any required information or statement in any application or request for approval;

5. Up to \$500.00 per violation for any violation not covered under (e)1 through 4 above;

6. For purposes of this subsection, in an occupied building, a code violation involving fire safety, structural soundness or the malfunctioning of mechanical equipment that would pose a life safety hazard shall be deemed to endanger the life or safety of a person. In an unoccupied building, a code violation of a requirement intended to protect members of the public who are walking by the prop-

erty shall be deemed to endanger the life or safety of a person.

Amended by R.2004 d.365, effective October 4, 2004.

See: 36 N.J.R. 2605(a), 36 N.J.R. 4441(a).

In (b), inserted "of 1999" following "Penalty Enforcement Law", amended the N.J.S.A. reference in (6), and substituted "and of the Superior Court" for "in addition to the courts specified by N.J.S.A. 2A:58-2"; added (e).

Amended by R.2007 d.46, effective February 5, 2007.

See: 38 N.J.R. 872(a), 39 N.J.R. 370(b).

Rewrote (d).

Amended by R.2007 d.124, effective May 7, 2007.

See: 38 N.J.R. 3708(a), 39 N.J.R. 1669(a).

In the introductory paragraph of (b), substituted a colon for a semicolon at the end; and in (b)5, deleted "whenever he shall not have done so in the original notice and orders" following "pay a penalty".

Case Notes

Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco*, D.N.J.1994, 842 F.Supp. 782.

5:23-2.32 Unsafe structures

(a) All buildings or structures that shall become unsafe, or unsanitary, or that contain deficient or blocked exitway facilities, or which constitute a fire hazard or are otherwise dangerous to human life or the public welfare, or that by reason of illegal or improper use or occupancy shall be deemed unsafe buildings or structures, shall be taken down and removed or made safe and secure. A vacant building that is unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this chapter.

1. Examination and record of damaged structure: The appropriate subcode official shall examine every building or structure reported as dangerous, unsafe structurally, unsanitary or constituting a fire hazard and shall prepare a report to be filed in a docket of unsafe structures and premises, stating the use of the structure, the nature of the hazard, the nature and estimated amount of damages, if any, caused by collapse or failure.

xv. Prepare and obtain reports required in the regulations;

xvi. Attend meetings and hearings as required by the regulations;

xvii. Carry out such other functions as are necessary and appropriate to the position of construction official;

xviii. Coordinate the activities of the subcode officials in enforcement of the energy radon hazard, elevator safety and mechanical subcodes;

xix. Reply within three business days to any request from the municipal search officer for information concerning construction permits or certificates of occupancy;

xx. Comply with any local procedures which may be established by the governing body to provide the municipal search officer with information concerning construction permits and certificates of occupancy;

xxi. File with the Department a notice of the execution of each contract with a private on-site inspection agency, which notice shall specify the subcode(s) covered by the contract, within 10 days after the effective date of the contract;

xxii. Take or initiate appropriate disciplinary action in the case of any subcode official or inspector failing to properly enforce the UCC. If the action includes suspension or dismissal, the construction official shall report this action to the Office of Regulatory Affairs via mail: Department of Community Affairs, Office of Regulatory Affairs, 101 S. Broad Street, PO Box 817, Trenton, NJ 08625;

xxiii. Issue a notice of violation pursuant to N.J.A.C. 5:23-2.35 for any violation of the provisions of the Code in effect at the time of permit application that comes to his or her attention. Pursuant to N.J.S.A. 2A:14-1.1, no notice of violation may be issued to the developer or to any contractor more than 10 years after issuance of the certificate of occupancy;

xxiv. Ensure that all units within a residential development, other than Group R-1, that might have similar violations are inspected for such violations and that any such violations found are cited and abated if violations of the provisions of the Code in effect at the time of permit application listed at N.J.A.C. 5:23-2.35(a)1 are found in a residential structure in the development subsequent to the issuance of a certificate of occupancy. The construction official shall supervise the work of any professional engineer or registered architect hired by the municipality for this purpose; and

xxv. Report the name of the developer and the nature of the code violation(s) to the Department by sending this information in writing to the Office of

Regulatory Affairs, 101 S. Broad Street, PO Box 818, Trenton, NJ 08625 whenever:

(1) It is necessary to take development-wide action for code violations discovered after issuance of certificate(s) of occupancy pursuant to N.J.A.C. 5:23-2.35(a)1;

(2) The municipal engineer advises the construction official that the municipality has had to call a bond posted pursuant to N.J.S.A. 40:55D-53 due to failure of the developer to complete site improvements satisfactorily; or

(3) The developer fails to maintain funds in the escrow account required pursuant to N.J.A.C. 5:23-4.17 unless the charges to the escrow account are under appeal.

2. Nothing contained herein shall prevent the construction official from overruling a decision of a subcode official if he is qualified and certified in that subcode pursuant to subchapter 5 of this chapter.

(i) Duties of subcode officials:

1. The subcode official shall enforce the regulations and:

i. Review those aspects of the application, plans and specifications appropriate to his subcode for approval and release to the construction official for issuance of the permit;

ii. Receive and review directly from the applicant applications involving only one trade or subcode and minor or emergency work for approval and release to the construction official for issuance of the permit;

iii. Collect fees for permit applications involving only trade or subcode and minor or emergency work and forward same to the construction official for proper accounting;

iv. Comply with the time limitations for review as determined by the construction official;

v. Review requests for variations as necessary;

vi. Perform all required inspections within three business days of the time for which inspection has been requested;

vii. Issue in the name of the enforcing agency notices of violation and notify the construction official of same. The subcode official may issue verbal orders at the jobsite and shall record such orders in his inspection report;

viii. Complete reports of all inspections performed;

ix. Issue stop construction orders in the name of the enforcing agency and notify the construction official of same or, in the case of a development-wide stop con-

struction order, make a recommendation to the construction official for issuance of the order;

x. Perform final inspection and notify construction official of approval in order that the construction official may issue certificate of occupancy;

xi. Make inspection, review submitted data and notify construction official of approval in the case of a change of use, or a request for a certificate of continued occupancy;

xii. Assist the construction official in the preparation of all reports required in the regulations;

xiii. Attend meetings and hearings as required by the regulations;

xiv. Issue documentation and certification, such as cut-in cards to utilities and/or public agencies if required by the regulations;

xv. Carry out such other functions as are necessary and appropriate to the position of subcode official.

2. In the course of enforcing the regulations, the fire protection subcode official shall cooperate, to the greatest extent possible, with the local fire service, which is the local fire department or district having jurisdiction.

i. The fire protection subcode official shall, upon request of the local fire service, allow a designated representative of the local fire service reasonable access to, and opportunity to review, plans submitted to the fire protection subcode official for his approval.

ii. The fire protection subcode official shall consult with the local fire service prior to granting any variations from the requirements of the fire protection subcode. If the fire protection subcode official is not himself a member of the local fire service, he shall, upon receipt of an application for a variation, forward a copy thereof to the local fire service and shall not grant a variation until he has received the comments of the local fire service or until 10 business days have passed, whichever comes first.

iii. The participation of the local fire service in the code enforcement process shall in no way be construed as reducing the responsibility of the fire protection subcode official for the proper enforcement of the fire protection subcode. Advice rendered by the local fire service shall in no way be binding upon the subcode official.

(j) Conflict of interest:

1. No person employed by an enforcing agency as construction or subcode official or as an inspector shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she, or any close relative or household member, or his or her superior within the enforcing agency or any close relative or

household member of such superior, or any other public official or employee having any direct or indirect control over the funding or operations of the enforcing agency or any close relative or household member of any such public official or employee, has an economic interest. For purposes of this paragraph, "close relative" shall mean and include a spouse, sibling, ancestor or descendant, or the spouse of any of them.

i. Where an inspection or enforcement procedure is necessary or required in any such property or business, and there is no other person employed by the enforcing agency who is qualified, pursuant to this chapter, to perform the inspection or enforcement procedure and who is not a subordinate of the person with the direct or indirect economic interest in such property or business, the official or inspector shall arrange for the inspection or enforcement to be carried out either by another local enforcing agency or by the Department.

ii. A separate log shall be maintained by the enforcing agency of all inspections and enforcement procedures performed, when permitted in accordance with (j)1i above, with regard to any properties or businesses in which any persons employed by the enforcing agency have a direct or indirect economic interest.

2. No person employed by an enforcing agency as a construction or subcode official, assistant to the construction or subcode official, trainee, inspector or plan reviewer, shall engage in, or otherwise be connected directly or indirectly for purposes of economic gain, with any business or employment furnishing labor, materials, products or services for the construction, alteration, or demolition of buildings or structures within any municipality in which he is so employed by an enforcing agency, and in any municipality adjacent to any municipality in which he is thus employed.

3. Persons subject to this subsection shall annually report any income or benefits received from any business or property subject to the Code, or from any business furnishing materials, products, labor or services for types of work subject to the Uniform Construction Code regulations, to the municipal governing body. This report shall include a list of all sources of income, but need not list the amount.

4. No person employed by a municipal enforcing agency as a construction official, subcode official or inspector shall be employed to appear before any construction board of appeals, or be involved in any court proceeding within the State, as a paid expert witness, or in any other compensated capacity in any proceeding involving the enforcement of the Uniform Construction Code except on behalf of another enforcing agency, or as a court-appointed witness.

i. This prohibition shall not apply to any litigation not involving enforcement of the Code, or to an appearance as a fact witness; nor shall it apply to any activities

unrelated to an action for, or an appeal of, enforcement of the Code.

5. This section shall not apply to:

i. The ownership of stock or other investment instrument in any corporation listed on any national stock exchange.

ii. Any such business or employment outside the State;

iii. Dual employment by two or more enforcing agencies;

iv. Any business or employment which is not subject to the regulations.

v. Service as an instructor in a code enforcement training program.

6. Nothing herein shall prohibit a municipality from establishing by ordinance more restrictive provisions covering conflict of interest.

(k) No person employed by an enforcing agency as a construction official, subcode official or inspector shall accept, or continue to hold, employment in one or more other municipalities as a construction official, subcode official or inspector unless the resulting combined workload is such that it can be discharged in a manner consistent with the requirements of this chapter.

Amended by R.1983 d.611, eff. January 3, 1984.

See: 15 N.J.R. 1789(a), 16 N.J.R. 45(b).

Deleted old (b)2.-3. and (c) and added new (b)2, (c), (d) and (e). Renumbered old (d)-(f) as new (f)-(h).

Amended by R.1984 d.303, effective July 16, 1984.

See: 16 N.J.R. 950(a), 16 N.J.R. 1968(b).

Added (g)2.

Amended by R.1990 d.61, effective February 5, 1990.

See: 21 N.J.R. 3346(b), 22 N.J.R. 351(b).

Form numbers updated, new (d)2. added and reference made to reports and fees being submitted quarterly.

Amended by R.1990 d.226, effective May 7, 1990.

See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a).

Radon mitigation added to (f)1xviii.

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Elevator safety added at (f)1xviii; conflict of interest provision added at (h).

Amended by R.1992 d.47, effective February 3, 1992.

See: 23 N.J.R. 3440(a), 24 N.J.R. 405(a).

Electronic monthly reporting added at (d)2.-4.

Amended by R.1992 d.230, effective June 1, 1992.

See: 24 N.J.R. 168(a), 24 N.J.R. 2052(a).

Form numbers changed in (b).

Amended by R.1992 d.243, effective July 6, 1992.

See: 24 N.J.R. 678(a), 24 N.J.R. 2422(a).

Conflict of interest and exception provisions added.

Amended by R.1992 d.392, effective October 5, 1992.

See: 24 N.J.R. 2657(a), 24 N.J.R. 3521(b).

Report form number changed at (e).

Amended by R.1993 d.581, effective November 15, 1993.

See: 25 N.J.R. 3693(a), 25 N.J.R. 5146(a).

Amended by R.1994 d.323, effective July 5, 1994 (operative January 1, 1995).

See: 25 N.J.R. 2162(a), 26 N.J.R. 2780(a).

Amended by R.1995 d.249, effective June 5, 1995, (operative October 1, 1995).

See: 27 N.J.R. 619(a), 27 N.J.R. 2187(a).

In (b)2 added Form No. F-370.

Amended by R.1996 d.512, effective November 4, 1996.

See: 28 N.J.R. 3697(a), 28 N.J.R. 4782(a).

Amended by R.1997 d.64, effective February 18, 1997 (operative May 19, 1997).

See: 28 N.J.R. 4695(a), 29 N.J.R. 550(a).

In (b)2, amended form references.

Amended by R.1997 d.378, effective September 15, 1997.

See: 29 N.J.R. 2742(a), 29 N.J.R. 4103(a).

In (b)2 and (c)1, amended form designations and in (b)2 deleted form F-330A and F-340A.

Amended by R.1997 d.419, effective October 6, 1997.

See: 29 N.J.R. 3406(a), 29 N.J.R. 4287(a).

In (j)1, inserted “, or his or her superior within ... any such superior,”; in (j)1i inserted “, and there is no other person ... property or business,”; and added (j)1ii.

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

In (b)2, inserted a reference to Form No. F380.

Amended by R.2000 d.413, effective October 16, 2000.

See: 32 N.J.R. 2278(a), 32 N.J.R. 3783(a).

In (j)1, substituted references to close relatives or household members for references to members of the immediate family, and added the second sentence; and deleted former (j)7.

Amended by R.2003 d.363, effective September 15, 2003.

See: 35 N.J.R. 2426(a), 35 N.J.R. 4281(a).

In (b), added forms F211, F212, F241, F242 and deleted form F240; deleted the revision dates of the referenced forms throughout.

Amended by R.2003 d.385, effective October 6, 2003.

See: 35 N.J.R. 2423(a), 35 N.J.R. 4713(a).

In (h), added 3.

Amended by R.2005 d.446, effective December 19, 2005.

See: 37 N.J.R. 2747(a), 37 N.J.R. 4907(a).

Added (h)1xxii.

Amended by R.2006 d.75, effective February 21, 2006.

See: 37 N.J.R. 3110(a), 38 N.J.R. 1183(a).

In (b)2, added Form F390, Framing Checklist.

Administrative correction.

See: 38 N.J.R. 1827(b).

In (h)1xxii, substituted “818” for “817” to correct PO Box number.

Amended by R.2006 d.355, effective October 2, 2006.

See: 38 N.J.R. 1789(a), 38 N.J.R. 4175(a).

In the table in (b)2, added entries for forms “F101”, “F213”, and “F214”; in (h)1xxi, deleted “and” from the end; in (h)1xxii, substituted a semicolon for a period at the end; added (h)1xxiii through xxv; and deleted (h)3.

Amended by R.2007 d.46, effective February 5, 2007.

See: 38 N.J.R. 872(a), 39 N.J.R. 370(b).

Rewrote (h)1xi and (i)1ix.

Administrative correction.

See: 39 N.J.R. 1249(a).

Amended by R.2007 d.143, effective May 7, 2007.

See: 39 N.J.R. 7(a), 39 N.J.R. 1672(a).

In (j)1, inserted “, or any other public official or employee having any direct or indirect control over the funding or operations of the enforcing agency or any close relative or household member of any such public official or employee,”.

Administrative correction.

See: 39 N.J.R. 3296(a).

Amended by R.2007 d.310, effective October 1, 2007.

See: 39 N.J.R. 135(a), 39 N.J.R. 4113(b).

Added (k).

Case Notes

Former N.J.A.C. 5:23-4.3 regarding conflict of interest valid. New Jersey State Plumbing Inspectors Assn., Inc. v. Sheehan, 163 N.J. Super. 398, 394 A.2d 1244 (App.Div.1978), certiorari denied 79 N.J. 484, 401 A.2d 239 (1979).

Monetary penalty against builder for code violations was not reduced for financial hardship, but was reduced by half to secure prompt compliance. *Bureau of Housing Inspection v. Regency Village Apartments*, 95 N.J.A.R.2d (CAF) 37.

Fraud and deceit while practicing as a licensed code enforcement official or inspector warranted license revocation. *Regulatory Affairs v. Zieniuk*, 95 N.J.A.R.2d (CAF) 15.

Conflict of interest precluded employment as elevator inspector. *Kunz v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 32.

5:23-4.5A (Reserved)

Repealed by R.2006 d.128, effective April 3, 2006.
See: 37 N.J.R. 4106(a), 38 N.J.R. 1573(a).

Section was "Selection of private on-site inspection and plan review agencies".

5:23-4.6 Interlocal enforcing agencies—establishment

(a) Parties: Any two or more municipalities may, by ordinance, join to administer and enforce the regulations and any subcode under the regulations. Any municipalities party to an agreement establishing one enforcing agency consisting of all subcodes may further provide for the establishment of a joint board of appeals.

(b) Agreement: Except as the section may add or substitute requirements, the procedures for the execution of any agreement pursuant to this section, shall be governed by the Interlocal Services Act (N.J.S.A. 40:8A-1 et seq.).

1. Upon the final adoption of an ordinance pursuant to the Interlocal Services Act, a copy of such ordinance, the contract, and any other pertinent information shall be forwarded to the department;

2. The term of any contract entered into pursuant to this section shall be four years.

3. The contract shall stipulate that the term of office of any construction or subcode official shall, except for good cause, be four years.

4. Such contract shall provide a mechanism for administration and enforcement within each of the contracting municipalities by one or more of the contracting municipalities, on an interim or emergency basis, should such agreement be invalidated by a court of competent jurisdiction or prove otherwise unenforceable.

5. The contract shall additionally stipulate the information contained in N.J.A.C. 5:23-4.7(b) and 4.8(a).

5:23-4.7 Interlocal enforcing agencies—organization

(a) General: Except as is provided in this section, enforcing agencies organized pursuant to this section shall, insofar as is practicable, be organized in the same manner as are municipal enforcing agencies.

(b) Exception: Nothing contained in N.J.A.C. 5:23-4.3, with respect to offices, shall require that only one central office be established pursuant to this section. Whenever municipalities join pursuant to this section, they shall establish offices which are reasonably accessible in terms of distance, location and function.

5:23-4.8 Interlocal enforcing agencies—administration and enforcement

(a) General: Enforcing agencies organized pursuant to this article shall administer and enforce the regulations in the same manner as municipal enforcing agencies.

(b) The provisions of N.J.A.C. 5:23-4.3 regarding conflict of interest shall be applicable to interlocal enforcing agencies, including all municipalities party to the interlocal agreement, to the extent that the agreement covers specific subcode activities.

5:23-4.9 State enforcing agencies—establishment

(a) Department of Community Affairs:

1. The Bureau of Local Code Enforcement in the Division of Codes and Standards is constituted as the enforcing agency for the purpose of administering and enforcing the code in those municipalities which have decided, pursuant to N.J.A.C. 5:23-4.3, not to enforce the code.

2. Pursuant to Reorganization Plan No. 004-1996, the Department is constituted as the sole plan review agency for the administration and enforcement of Federal and State standards applicable to the construction, alternation, demolition or maintenance of health care facilities, as defined in N.J.A.C. 5:23-1.4.

(b) Division of Building and Construction, Department of the Treasury:

1. The Division of Building and Construction is constituted as the enforcing agency for the purpose of performing plan review if the Department of Community Affairs cannot approve plans within the 20-day period provided for in N.J.S.A. 52:27D-131, with respect to buildings built under the supervision of the Division of Building and Construction.

Administrative Correction to (a)1.

See: 22 N.J.R. 2503(b).

Amended by R.1997 d.417, effective October 6, 1997.

See: 29 N.J.R. 3387(a), 29 N.J.R. 4285(a).

In (a)1, changed enforcing agency and amended N.J.A.C. references; deleted (a)1i and (c); inserted (a)2; and recodified former (d) as (c).

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

In (b)1, substituted "performing plan review" for "administering and enforcing the regulation" following "purpose of"; and deleted a former (c).

Administrative correction.

See: 36 N.J.R. 466(a).