

Amended by R.1991 d.359, effective July 15, 1991.

See: 23 N.J.R. 1235(a), 23 N.J.R. 2122(b).

Fire official to serve as the chief administrator of the local enforcing authority.

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

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

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

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

5:71-2.4 Fire districts

(a) If a fire district designated as a local enforcing agency under this subchapter is dissolved, the fire department within the territorial area of the dissolved district shall have the option, within 30 days of the dissolution, to assume the local enforcing agency responsibilities. If the fire department does not exercise the option, it shall pass to another district within the municipality, and if not exercised by another district shall pass to the municipality itself. The district and municipality shall each have 15 days in which to decide the matter.

1. If the dissolved district has combined with another district or districts, the remaining district(s) shall have the option, within 30 days of the dissolution, to assume local enforcing agency responsibilities. If this option is not exercised, it shall pass to the fire department within the territorial area of the dissolved districts and, if not exercised, shall pass to the municipality. The department and municipality shall each have 15 days in which to decide the matter.

2. Exercise of the option shall be evidenced by a written notice signed by the party authorized to act on behalf of the entity. This notice shall be delivered to the municipal governing body which enacted the ordinance authorizing local enforcement. In addition, a copy shall immediately be forwarded to the Division.

3. The local enabling ordinance governing the local enforcing agency shall be modified if necessary and promptly filed with the Division. The new local enforcing agency shall promptly assume local enforcing agency responsibilities and notify the Division.

4. If, within 60 days of dissolution, the Division has not received proper written notice of the assumption of a dissolved district's obligations, the Division shall assume responsibility.

(b) Fire districts created after June 18, 1985, shall have 60 days from the date of the first meeting of the Board of Commissioners in which to request designation as a local enforcing agency in accordance with the provisions set forth in this subchapter. If such a request is made and a local enforcing agency exists, the district and such agency shall cooperate in transferring the local enforcing agency responsibilities.

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

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

(c)4 deleted; (c)5 renumbered as (c)4.

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

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

5:71-2.5 State enforcing agency; establishment

The Division is constituted as the State enforcing agency for the purpose of administering and enforcing the Code in those areas where a local enforcing agency has not been established or designated for the inspection of life hazard uses and as provided in N.J.A.C. 5:70-2.2(b)3.

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

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

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

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

5:71-2.6 Collection of and accounting for fees and penalties

(a) Collection of registration fees:

1. The Division shall annually bill for and take such steps as may be necessary to collect or provide for the collection of the annual registration fees provided for by the Code. No fee shall be assessed against premises owned by the agency enforcing the Code.

2. The Division shall remit 65 percent of the amount collected, unless indicated otherwise below, to the local enforcing agency established for the inspection of life hazard uses. This payment shall be disbursed by the end of the quarter next succeeding the one in which fees were collected.

i. In those cases in which a fee has been reduced effective November 1, 1996, and that reduction would result in the loss of revenue to a local enforcing agency for life hazard uses registered prior to that date, the Division shall adjust upward from 65 percent the percentage remitted in order to eliminate or reduce that loss.

ii. In no case shall the percentage remitted exceed 100 percent of the amount collected.

iii. No later than 30 days following the end of the calendar year (December 31), the local enforcing agency shall forward to the Division a form verifying the status of all life hazard use inspections performed during the year. The agency shall utilize a Division-approved format which satisfies the following requirements:

(1) The form shall be signed by both the fire official and the chief administrative officer of the municipality or the fire district, as the case may be;

(2) Signatures shall be notarized; and

(3) The form shall detail the total number of life hazard uses, specify the number of uses and number of inspections required annually and indicate the number of inspections performed during the reporting period.

iv. In those cases where all annual life hazard use inspections have not been completed, the Division shall deduct an amount, equal to the registration fees attrib-

utable to those uses, from the amount of the life hazard use registration fees disbursed during the next quarter, or as many subsequent quarters are necessary.

3. The local share shall not be considered State funds but rather local funds held in trust by the State.

4. Where a local enforcing agency has been assigned a certificate of judgment in accordance with N.J.A.C. 5:70-2.6(g)1, it shall remit 35 percent of the net amount collected to the Division by the end of the quarter next succeeding the one in which the fees were collected unless, however, the fee collected is one where the Division has adjusted upward the percentage to be remitted, in which case the amount remitted to the Division shall be the difference between the adjusted percentage and 100 percent.

i. The local enforcing agency may deduct the costs of collection from the total amount collected provided an accounting of the costs is included with the remittance. Any such deduction shall be made prior to calculating the required remittance.

(b) Permit fees and other fees provided for or allowed by the Code or any local ordinance or any penalties shall be collected and retained fully on behalf of the enforcement agency having jurisdiction. Penalties collected by the Division for failure to register or for late payment of fees shall be retained fully by the Division.

(c) All revenues collected by the Division shall be deposited in the Fire Safety Revolving Fund created by the Treasurer of the State of New Jersey. Expenditures may be made from the fund to carry out any of the responsibilities of the Division.

(d) All revenues generated pursuant to the Act or local implementing ordinance which are collected by or provided to a county or municipality shall be appropriated by the local governing body to the local enforcing agency for the purpose of enforcing the Code, operating the local enforcing agency and advancing local fire prevention interests.

(e) The Division shall have no obligation to a local enforcing agency in respect of fees due but not collected in any given quarter.

(f) When the fire official fails to submit the certification required pursuant to (a) above or makes a false or misleading written statement concerning the certification or the inspection records, the Division shall notify the agency and shall thereafter assume responsibility for all inspection and enforcement with respect to life hazard uses within the jurisdiction of the local enforcing agency.

1. All fees and penalties associated with the enforcement of the Code in life hazard uses shall from that date forward be paid to the Division.

2. The local enforcing agency shall forfeit authority for enforcement of the Code with respect to life hazard uses within the jurisdiction of the local enforcing agency for a period of at least five years.

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

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

(b) deleted; (c)-(e) renumbered (b)-(d).

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

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

In (a)2 and 3: changed "80 percent" to "70 percent".

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

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

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

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

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

Local enforcing agency to receive 65% of fees.

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

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

Text on collection of judgements added at (a); stylistic changes.

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

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

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.1996 d.501, effective October 21, 1996.

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

Amended by R.2001 d.136, effective May 7, 2001.

See: 32 N.J.R. 3363(a), 33 N.J.R. 1403(a).

In (a), added 2iii and 2iv; added (f).

5:71-2.7 Registry of agencies

(a) Each municipality that passes an ordinance establishing a local enforcing agency shall file a copy of same with the Division within two weeks of final adoption. Each county that passes an ordinance or resolution establishing a county enforcing agency shall file a copy of same with the Division within two weeks of adoption.

1. Any municipality or county that later amends a resolution or an ordinance that established an enforcing agency shall file a copy of the amendments with the Division within two weeks of adoption.

2. A municipality or county that does not file an ordinance or resolution shall be deemed not to have passed one, in which case, the Division shall enforce the Code in that jurisdiction.

(b) The Division shall compile those ordinances and resolutions and shall issue quarterly a Registry of Enforcing Agencies. The Registry shall be made available to the general public and shall show what agency is responsible to enforce the Code and what agency is responsible to inspect life hazard uses in every area of the State.

(c) The status of any enforcing agency with respect to responsibility to enforce the Code or inspect life hazard uses shall change as of the deadline date for submission to the next applicable quarterly registry unless the Division assumes jurisdiction in accordance with these regulations. Submission deadline dates for the registry are as follows:

i. For the annual (first quarter) registry, December 31 of the previous year.

ii. For the second quarter registry, March 31; for the third quarter registry, June 30; and, for the fourth quarter registry, September 30.

(d) If the Commissioner returns jurisdiction to a local enforcing agency pursuant to N.J.A.C. 5:71-2.10, the effective date shall be the deadline date for submission of the next quarterly publication of the Registry of Enforcing Agencies following the Commissioner's decision.

(e) When the Division assumes responsibility pursuant to N.J.A.C. 5:71-4.3(c), then the effective date shall be the 61st day after the vacancy occurs unless the Division grants a 30 day extension as provided in N.J.A.C. 5:71-4.3(c).

Amended by R.1993 d.628, effective December 6, 1993.
See: 25 N.J.R. 4363(a), 25 N.J.R. 5466(a).
Amended by R.1995 d.58, effective March 6, 1995.
See: 26 N.J.R. 4258(a), 27 N.J.R. 878(b).

5:71-2.8 Amendments to the Code

(a) Local amendments of the technical standards of N.J.A.C. 5:70-3 and 4 are permitted to be adopted by ordinance but no such amendment shall require a building which complies with the Uniform Construction Code to conform to a more restrictive standard.

(b) No amendment to N.J.A.C. 5:70-1 and 2 is permitted except for permit and certificate of smoke detector compliance fees in accordance with N.J.A.C. 5:70-2.7.

(c) Any amendments adopted shall be filed with the Division in accordance with N.J.A.C. 5:71-2.7(a).

(d) Whenever any person believes that a locally adopted amendment establishes a more restrictive requirement than that established for the same building or circumstance by the Uniform Construction Code, then that person may apply to the Commissioner for a determination pursuant to N.J.S.A. 52:14B-8.

1. Any such application shall be in writing and shall set forth the particular provision of the local amendment which is allegedly more restrictive and the reasons the person believes it to be so.

2. The Commissioner shall issue a preliminary ruling stating whether or not the amendment establishes a more restrictive requirement and shall notify the applicant and the local enforcing agency. Each party shall have 30 days in which to file exceptions to the preliminary ruling after which the Commissioner shall adopt it as originally set forth or as modified and make it a final ruling.

3. A final ruling which finds an amendment to the Code adopted by local ordinance to be more restrictive shall set forth each particular in which the ordinance is more

restrictive. Those particulars shall be declared invalid and shall be of no further force or effect.

Amended by R.1993 d.628, effective December 6, 1993.
See: 25 N.J.R. 4363(a), 25 N.J.R. 5466(a).
Amended by R.1995 d.58, effective March 6, 1995.
See: 26 N.J.R. 4258(a), 27 N.J.R. 878(b).

5:71-2.9 Conflict of interest

(a) No person employed by an enforcing agency as a fire official or fire inspector shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she or a member of his or her immediate family has an economic interest.

1. Where an inspection or enforcement procedure is necessary or required in any such property or business, then the fire official shall arrange for the inspection or enforcement to be carried out by the county enforcing agency, the local enforcing agency of an adjoining jurisdiction or the Division of Fire Safety.

(b) No person employed by an enforcing agency as a fire official or fire inspector 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 related in any way to fire safety within any municipality in which he or she is employed by an enforcing agency or in any municipality adjacent to any municipality in which he or she is thus employed.

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

(d) No person employed by a municipal enforcing agency as a fire official or fire 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 Fire Code except on behalf of another enforcing agency, or as a court-appointed witness.

1. This prohibition shall not apply to any litigation not involving enforcement of the Code, or to 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.

(e) This section shall not apply to:

1. The ownership of stock or other investment instrument of any corporation listed on any national stock exchange;

2. Any business or employment outside the State;
3. Dual employment by two or more enforcing agencies;
4. Any business or employment that is not subject to the Code; or
5. Service as an instructor in a code enforcement training program.

(f) Nothing herein shall prohibit a county or a municipality from establishing, by ordinance or resolution, more restrictive provisions regarding conflict of interest.

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 provisions added at (b), (c) and (d); exception added at (e); redesignated existing (e) as (f).

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

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

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

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

5:71-2.10 Departmental monitoring

(a) The Division of Fire Safety shall institute a regular program of monitoring local enforcing agencies to ensure that the Code is being properly enforced. This monitoring program shall provide for a regular schedule of random field visits, as well as monitoring visits in response to complaints.

(b) When making a monitoring visit, the Division shall determine:

1. Whether the fire official and any inspectors are certified in accordance with the requirements of these regulations;
2. Whether all fees are being received and properly accounted for and whether required collection procedures are being implemented in the case of delinquent fees;
3. Whether all required periodic inspections of life hazard uses are being carried out when required by law;
4. Whether all inspections required in conjunction with required permits are being carried out;
5. Whether records are being maintained for all inspections;
6. Whether enforcement action as required by the Code is being taken when violations are found or when the owner fails to correct them;
7. Whether the local enforcing agency has an effective program to discover unregistered life hazard uses or activities which require a permit which do not have them;
8. Whether the local enforcing agency has an adequate number of inspectors and other staff for its workload;
9. Whether the local enforcing agency is in violation of any requirement of these regulations.

(c) If the Division determines that a local enforcing agency has failed to enforce the Code properly, then the Division shall notify the local enforcing agency of this determination and direct corrective action as needed.

(d) The local enforcing agency shall have 15 days in which to contest the Division's findings by filing exceptions in writing with the Division. The Division shall consider any such exceptions and issue a final finding.

(e) Where the local enforcing agency shall fail to take corrective action, where the failure to enforce the Code is pervasive and substantial, or if the agency is improperly constituted then the Division shall notify the local enforcing agency of its determination or final finding and shall thereafter assume responsibility for all inspection and enforcement with respect to life hazard uses within the jurisdiction of the local enforcing agency. All fees and penalties associated with the enforcement in life hazard uses shall from that date forward be paid to the Division.

(f) Where the Division has assumed responsibility the local agency may petition the Commissioner to return jurisdiction. The petition shall set forth the corrective action the local enforcing agency has taken, or will take, to ensure proper enforcement of the Code. The Commissioner may return jurisdiction if he or she finds that the Code will be properly and fully enforced.

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

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

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

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

5:71-2.11 Right of appeal

In accordance with N.J.S.A. 52:27D-206, any person or agency aggrieved by a notice, order, action or decision of the Division pursuant to this subchapter shall be entitled to a hearing before the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1, provided that a request for a hearing is submitted to the Hearing Coordinator, Department of Community Affairs, PO Box 802, Trenton, New Jersey 08625-0802 within 15 days of the person or agency's receipt of the notice or order complained of.

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

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

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

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

SUBCHAPTER 3. ORGANIZATION, ADMINISTRATION AND ENFORCEMENT

5:71-3.1 Applicability

The provision of this subchapter shall apply to all local and county enforcing agencies. The term local enforcing agency shall mean and include county enforcing agencies whenever the term is used in this subchapter.