

**CHAPTER 71**

**FIRE CODE ENFORCEMENT**

**Authority**

N.J.S.A. 52:27D-198.

**Source and Effective Date**

R.2000 d.30, effective December 22, 1999.  
See: 31 N.J.R. 3257(a), 32 N.J.R. 273(c).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 71, Fire Code Enforcement, expires on June 20, 2005. See: 36 N.J.R. 3652(a).

**Chapter Historical Note**

Chapter 71, County Offices on Aging, was adopted as R.1975 d.192, effective July 1, 1975. See: 7 N.J.R. 247(e), 7 N.J.R. 355(a). Chapter 71 was repealed and a new Chapter 71 was adopted by R.1981 d.356, effective September 10, 1981. See: 13 N.J.R. 395(c), 13 N.J.R. 563(a). Pursuant to Executive Order No. 66(1978), Chapter 71 was readopted as R.1985 d.176, effective March 22, 1985. See: 17 N.J.R. 342(a), 17 N.J.R. 904(c). Pursuant to Executive Order No. 66(1978), Chapter 71 expired on March 1, 1990. Chapter 71, County Offices on Aging, was adopted as R.1990 d.282, effective June 4, 1990. See: 22 N.J.R. 1016(b), 22 N.J.R. 1720(c). Pursuant to Executive Order No. 66(1978), Chapter 71 was readopted as R.1995 d.341, effective June 2, 1995. See: 27 N.J.R. 1719(a), 27 N.J.R. 2579(a). Pursuant to Reorganization Plan No. 001-1996, Chapter 71, County Offices on Aging, was recodified to N.J.A.C. 8:88, effective October 15, 1997. See: 29 N.J.R. 4679(a).

Chapter 71, Fire Code Enforcement, was originally codified in Title 5 as Chapter 18A, Fire Code Enforcement. Chapter 18A was adopted as R.1985 d.66, effective February 19, 1985. See: 16 N.J.R. 3339(b), 17 N.J.R. 394(a).

Pursuant to Executive Order No. 66(1978), Chapter 18A was readopted as R.1990 d.72, effective January 4, 1990. See: 21 N.J.R. 3344(a), 22 N.J.R. 337(b).

Pursuant to Executive Order No. 66(1978), Chapter 18A was readopted as R.1995 d.58, effective January 3, 1995. See: 26 N.J.R. 4258(a), 27 N.J.R. 878(b).

Pursuant to Reorganization Plan 002-1998, Chapter 18A, Fire Code Enforcement, was recodified as N.J.A.C. 5:71, effective July 1, 1998. See: 30 N.J.R. 1347(a), 30 N.J.R. 2644(a).

Pursuant to Executive Order No. 66(1978), Chapter 71, Fire Code Enforcement, was readopted as R.2000 d.30, effective December 22, 1999. See: Source and Effective Date.

**Cross References**

Child care center physical facility requirements, see N.J.A.C. 10:122-5.1 et seq.

Children's group home physical facility requirements, see N.J.A.C. 10:128-4.1 et seq.

Children's shelter physical facility requirements, see N.J.A.C. 10:124-5.1 et seq.

Residential child care physical facility requirements, see N.J.A.C. 10:127-4.1.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**5:71-1.1 Title; scope; division into parts**

(a) These regulations shall be known as the "Regulations for Fire Code Enforcement".

(b) The regulations are divided into four subchapters:

1. N.J.A.C. 5:71-1, entitled "General Provisions";
2. N.J.A.C. 5:71-2, entitled "Enforcing Agencies, Establishment and Responsibilities";

3. N.J.A.C. 5:71-3, entitled "Organization, Administration and Enforcement"; and
4. N.J.A.C. 5:71-4, entitled "Certification of Fire Officials."

Amended by R.1995 d.58, effective March 6, 1995.  
See: 26 N.J.R. 4258(a), 27 N.J.R. 878(b).

### 5:71-1.2 Authority

These regulations are promulgated by the Commissioner of the Department of Community Affairs pursuant to the authority conferred by the Uniform Fire Safety Act (P.L. 1983, c.383; N.J.S.A. 52:27D-192 et seq.).

### 5:71-1.3 Intent and purpose

(a) It is the intent and purpose of the regulations to ensure that:

1. All areas of the State are protected by the enforcement of a uniform minimum Fire Code which will protect the lives of the State's citizens;
2. Uniform, thorough, and adequately funded fire safety inspections are performed to protect the public wherever buildings and uses which pose a serious life safety hazard are found;
3. Penalties for violators are swiftly assessed and commensurate with the gravity of the offense;
4. Fire Code enforcement is efficient and coordinated to eliminate duplication of effort and confusion on the part of the public; and
5. The standards enforced on the State and local levels are interpreted consistently.

### 5:71-1.4 Definitions

(a) As used in this chapter

"Act" means the Uniform Fire Safety Act (P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq.).

"Board of Appeals" means the Construction Code Board of Appeals created by the State Uniform Construction Code Act (P.L. 1975, c.217, N.J.S.A. 52:27D-119 et seq.).

"Code" or "fire code" means the Uniform Fire Code adopted as N.J.A.C. 5:70.

"Commissioner" means the Commissioner of the Department of Community Affairs.

"County enforcing agency" means a county fire marshal designated by a board of chosen freeholders to enforce the Code.

"Department" means the Department of Community Affairs.

"Division" means the Division of Fire Safety of the Department of Community Affairs.

"Fire company" means a private volunteer organization established for the purpose of fighting fires.

"Fire department" means a paid, part paid or volunteer fire-fighting force, body or agency established by ordinance as a division of municipal government, or one or more volunteer fire companies that have contracted with a municipality to provide fire protection. A fire district shall be treated as a fire department for all purposes herein, but no fire fighting force, body or agency within the territorial jurisdiction of a fire district shall in any case be deemed to be a fire department.

"Fire district" means a district established pursuant to N.J.S.A. 40A:14-70.

"Fire Inspector" means a person working under the direction of the fire official who is certified by the Commissioner of the Department of Community Affairs and appointed or designated to enforce the Code by the appointing authority of a local enforcing agency.

"Fire Official" means a person certified by the Commissioner of the Department of Community Affairs and appointed or designated to direct the enforcement of the Code. This term shall also include "Fire Marshall" where the fire official has been appointed pursuant to N.J.A.C. 5:71-3.2.

"Fire subcode official" means the official appointed pursuant to the New Jersey Uniform Construction Code to enforce the Fire Protection Subcode.

"Local enforcing agency" means a municipal agency, fire department, fire district, or county fire marshal authorized by municipal ordinance to enforce the act within a specific local jurisdiction; or where such authorization has not been granted by local ordinance, it means the Department of Community Affairs. "Local enforcing agency" shall also mean and include a county fire marshal authorized by ordinance or resolution of the board of chosen freeholders to enforce the act in county facilities. With regard to enforcement of the act in premises owned or maintained by the State of New Jersey or any of its boards, commissions, agencies or authorities, "local enforcing agency" shall mean the Division.

"Life hazard use" means any life hazard use designated by the Code as defined in N.J.A.C. 5:70-1.5.

"Owner" means a person who owns, purports to own, manages, rents, leases, or exercises control over a building, structure, premises or use or any portion thereof.

Amended by R.1991 d.359, effective July 15, 1991.  
See: 23 N.J.R. 1235(a), 23 N.J.R. 2122(b).

Definition of fire inspector added.  
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).  
Emergency amendment, R.2000 d.402, effective September 8, 2000 (to  
expire November 7, 2000).  
See: 32 N.J.R. 3647(a)  
In "Local enforcing agency", inserted last sentence.

Adopted concurrent proposal, R.2000 d.486, effective November 6,  
2000.  
See: 32 N.J.R. 3647(a), 32 N.J.R. 4310(a).  
Readopted provisions of R.2000 d.402 without change.

**5:71-1.5 Effective date**

These regulations shall take effect immediately upon pro-  
mulgation.

(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. 5:70-2.9(f).

(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).  
Administrative correction.  
See: 35 N.J.R. 219(d).

#### 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**

agency shall mean and include county enforcing agencies whenever the term is used in this subchapter.

**5:71-3.1 Applicability**

The provision of this subchapter shall apply to all local and county enforcing agencies. The term local enforcing