

Uniform Construction Code

Construction Official Commentary

State of New Jersey

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GOALS AND OBJECTIVES

The goal of this commentary is to expound on the duties of a Construction Official as outlined in NJAC 5:23-4.5(h). It is intended to enhance the users understanding of the Uniform Construction Code regulations. It is important to understand that it references current regulations and may not be consistent with future regulatory changes. Accordingly, the user should always refer to the regulations as adopted.

For further clarification, the *Municipal Procedures Manual* goes hand in hand with the commentary; therefore we recommend you read them together. The manual is written as a “role play” scenario of the supporting team of players found in a code enforcement department.

STATE LAW AND RULEMAKING

Excerpts from: Administrative Law Practicable Skills Series
New Jersey Institute for Continuing Legal Education (ICLE)

The modern system of administrative law in New Jersey has its genesis in the 1947 Constitution. One of the main objectives of the Constitutional Convention was the creation of a strong executive branch. To achieve this goal, it was recognized that the major principles of modern state administrative reorganization had to be incorporated into the 1947 Constitution:

“These principles-directed toward the achievement of maximum efficiency and economy in the execution of State administrative activities are:

- Integration of all administrative activities within a few well balanced principal departments;
- Establishment of direct lines of responsibility for the administration of such functions and activities from the Governor, through the department heads, to the subordinate officers of each department;
- Providing the Governor with executive authority commensurate with his responsibilities to the people of the State,” ***.” Milmed, “The New Jersey Constitution of 1947,” in N.J.S.A. Construction. 91 at 103-104.

The framers of the 1947 constitution agreed that to strengthen the executive branch, the departments of State government should be limited to twenty and that the Governor should have the power to appoint the various department heads. There was a split of opinion, however, as to whether each department should be headed by a single executive or whether the constitution should have sufficient flexibility to permit multi-member boards to head departments. A compromise was reached on this issue whereby the Constitution permitted the Legislature the

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discretion to create multi-member boards to head departments in State government. These recommendations to strengthen the executive branch were incorporated in the following provisions of the Constitution adopted by the electorate in 1947:

“Whenever a board, commission or other body shall be the head of a principal department, the members thereof shall be nominated and appointed by the Governor with the advice and consent of the Senate, and may be removed in the manner provided by law. Such a board, commission or other body may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the Governor. Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard.”

There are presently 20 executive departments in State government, the maximum permitted by the Constitution.

In 1978, the Legislature created the Office of Administrative Law (hereafter OAL), a central independent agency staffed by professionals whose major function was the conduct of administrative hearings. The establishment of OAL was the “culmination of years of effort to achieve fundamental reforms affecting the administrative agencies of state government.” While the newly created OAL was given responsibilities respecting the rule making activities of State agencies, its most important function was to conduct the hearings in contested cases which arose in the various administrative agencies of the State.

The major purpose of the OAL Act was to bring objectivity to agency hearings and ultimately to achieve higher levels of fairness in administrative adjudication. In addition to promoting due process, it was envisioned that its creation would expedite the processing of contested cases and reduce the cost of administrative adjudication both to the litigants and to the State. These objectives were to be achieved by replacing full-time and part-time hearing examiners, employed by State agencies, with an independent corps of full-time State employees allocated to the executive branch and designated “Administrative Law Judges.” Pursuant to the legislative scheme, administrative law judges, who were not subject to supervision by the agency heads, would conduct the hearings in contested cases and would prepare a recommended report and decision.

It is the duty of the Director of OAL to assign an administrative law judge to any agency empowered to conduct contested cases to preside over proceedings. Administrative law judges are appointed by the Governor with the consent of the Senate for five-year terms. They must be either attorneys-at-law of New Jersey or, in the judgment of the Governor or the Director, qualified in the field of administrative law, administrative hearings and proceedings, or in subject matter

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relating to the hearing functions of a particular state agency.

The agency head, however, retained final decision making authority; upon review of the record this official was free to “adopt, reject or modify the recommended report and decision” of the administrative law judge(ALJ). If the agency head failed to act on the decision of the ALJ within 45 days (or failed to have that period extended), the initial decision would become the final decision of the agency head. The OAL Act also recognized the right of the agency head “to determine whether a case is contested” and “to conduct the hearing directly.”

In order to eliminate the confusion caused by the diverse procedural rules adopted by the various State agencies, the OAL statute also authorized the Director of OAL to develop uniform standards for determining whether a summary or plenary hearing should be held to regulate the conduct of contested cases and the rendering of administrative adjudication.

Through the development of uniform rules of procedure, a contested case arising in the Civil Service Commission would be conducted in a manner similar to contested cases originating in the Department of Environmental Protection or the Department of Community Affairs. The establishment of a simplified, uniform procedure was also viewed as a means to expedite the hearings and reduce costs while at the same time making the administrative process more accessible and understandable to the average citizen.

“In creating an independent Office of Administrative Law, the Legislature intended no alteration of the regulatory authority or basic decisional powers of administrative agencies. The ‘independence’ of which we speak when describing the OAL is directed to that office’s ability to conduct administrative hearings in order to make recommended factual findings and determinations in contested cases. Administrative law judges have no independent decisional authority. Any attempt to exercise such authority would constitute a serious encroachment upon an agencies ability to exercise its statutory jurisdiction and discharge its regulatory responsibilities. As previously noted, the Legislature expressly reserved to the agency heads the power to decide contested cases. That power is a necessary appendage of the agency’s regulatory arsenal. Administrative agencies cannot be expected to cover the course of administrative regulation on one leg. They need both their rule making and adjudicator powers to perform their duties properly.”

Therefore, although the OAL Act brought significant changes to the process of administrative law in New Jersey, it did not alter the basic regulatory responsibilities of State agencies. Contested cases still originate in the individual State agencies and those State agencies are still entrusted with authority to render final decisions in these cases. The Legislature has reserved final decisional

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authority to the agency heads since it is the agencies that have “statutory jurisdiction to set and enforce regulatory policy.” Agencies must be free to establish and implement policy both through the adoption of rules and the adjudication of contested cases. Therefore, it is the Commissioner who is the “agency head” under the Administrative Procedure Act (APA). As agency head, it is the Commissioner of Community Affairs who determines whether a matter is a contested case or not.

ADMINISTRATIVE PROCEDURE ACT

The 1947 Constitution of New Jersey provided:

No rule or regulation made by any department, officer, agency or authority of this State, except such as relates to the organization or internal management of the State government or a part thereof, shall take effect until it is filed either with the Secretary of State or in such manner as may be required by law. The Legislature shall provide for the prompt publication of such rules and regulations.

RULE MAKING

If an agency intends to exercise its quasi-legislative powers through the adoption, amendment or repeal of any rule, the APA requires that it give notice of its intended action. This notice is to include a statement of the terms or substances of its proposed action. The agency must also indicate the time, place and manner in which interested persons may submit their views. The APA requires that this notice be mailed to certain individuals and published in the New Jersey Register. The agency must afford all interested parties a reasonable opportunity to submit data, views or arguments, orally or in writing, and the agency is to consider fully all written and oral submissions respecting the proposed rule. The APA also provides a truncated procedure when there is “an imminent peril to the public health, safety or welfare.” The administrative rules, as proposed and finally adopted, are to be published in the New Jersey Register while all the effective rules adopted by each agency are to be published in the New Jersey Administrative Code.

The APA requirements governing the rule making activities of State agencies remained basically constant from 1968 until the adoption of P.L. 1981,c.27, which significantly expanded these procedural requirements. The main objective of the amendments, however, was to provide for legislative oversight of the rule making activities of State agencies in the executive branch of government. The General Assembly sought a declaratory judgment that the Legislative Oversight Act was constitutional. In *General Assembly of State of New Jersey v. Byrne*, 90 NJ 376 (1982), the Supreme Court concluded that the Act violated the constitutional separation of powers. Observing that the function of rulemaking “lies at the very heart of the administrative process,” and allows agencies to further the policy goals of legislation by developing coherent and rational codes of conduct, the Court found:

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“By allowing the Legislature to control agency rulemaking, the legislative veto can gravely impair the functions of agencies charged with enforcing statutes. The extremely broad legislative veto in the Oversight Act thereby frustrates the executives constitutional mandate to faithfully execute the law.”

The remarkably broad veto power was also found by the Court to offer “almost unlimited potential for law making without the constitutionally required participation of the Governor and for undue interference with the executive branch.” It was, therefore, found to be an exercise of legislative power forbidden by the New Jersey Constitution. Although the legislative veto of the Legislative Oversight Act was invalidated by the decision in General Assembly, the other procedural aspects of the Act were not addressed and have continued to be followed by the State agencies.

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

This Commission is authorized to initiate, receive, hear and review complaints regarding violations, by any State Officer or employee or special State Officer or employee in the Executive Branch of Government, of the New Jersey Conflicts of Interest Law and the various codes of ethics adopted in accordance with the Law. The Executive Commission does not have jurisdiction to hear complaints involving the Legislative Branch of Government or local governmental entities.

DEPARTMENT OF COMMUNITY AFFAIRS

Established by N.J.S. 52:27D-1 with the belief that the role of government is to empower communities and individuals through technical, advisory and financial assistance so that they can solve their particular problems and improve their circumstances, it offers a wide range of programs and services to the state’s 566 municipalities, 21 counties, various social service agencies, and individual citizens. They are most typically served through various Bureaus within several Divisions.

In addition, the Department has six quasi-independent agencies: the Hackensack Meadowlands Development Commission, the Housing and Mortgage Finance Agency, the Council On Affordable Housing, the NJ Redevelopment Authority and the Office of State Planning.

The actions of the State departments, when applying laws entrusted to them, are not solely executive in nature but often share legislative or judicial qualities. When an agency acts, under its statutory mandate, to determine the specific rights or obligations of particular individuals before it, its actions “partakes of the judicial, its exercise is styled ‘quasi-judicial’”. If a department acts in its quasi-judicial or adjudicator capacity, it must provide those procedural safeguards generally attendant upon judicial proceedings. Normally, these requirements include findings of fact based upon evidence adduced at a hearing. Cross-examination and rebuttal

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are also basic elements of the hearing essential to due process. Indeed, cross-examination has been held to be an indispensable instrument for assessing the evidential worth of assertions of fact or opinion. Finally, in deciding a particular matter, the agency head is bound to consider only the record of evidence and argument and not be influenced by extraneous considerations which might be appropriate in the purely executive but not in the quasi-judicial field of activity.

When a department gives specific form and content to a broad statutory provision by adopting administrative rules, it is said to be acting in its quasi-legislative capacity. Legislative power is distinguished from judicial power in that it operates basically in the future rather than on past transactions or circumstances and involves unspecified parties rather than particular individuals. If a legislative hearing is held to receive comment on a proposed administrative rule, it is a non-adversarial proceeding, which seeks to devise broad policy applicable to the public generally, rather than to individual parties. Unlike quasi-judicial proceedings, there is no right to confrontation and cross-examination nor is there a requirement that findings of fact be made to support the various provisions of the administrative regulations.

Both federal and state courts have recognized that administrative agencies are empowered to effectuate their regulatory policies either through rule making or adjudication. Further, agencies necessarily possess great flexibility and discretion in selecting the form of proceeding best suited to achieving their regulatory aims.

The function of filling in the interstices of an enabling act should be performed, as much as possible, through the quasi-legislative promulgation of rules to be applied in the future. But any rigid requirement to that effect would make the administrative process inflexible and incapable of dealing with many of the specialized problems which arise. Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order.

The Bureau of Housing Inspection within the Department of Community Affairs has jurisdiction over multiple dwellings containing three or more apartments, hotels and motels. Any individual aggrieved by an Inspection Report and Order of the Commissioner with regard to a multiple dwelling, "shall be entitled to a hearing before the Commissioner." The Division of Codes and Standards within the Department administers and enforces the Uniform Construction Code Act, and also licenses individuals to administer and enforce the UCC. Any person aggrieved by a ruling of the agency under this Act is "entitled to a hearing pursuant to the Administrative Procedure Act."

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PROMULGATION OF THE UNIFORM CONSTRUCTION CODE

In October 1975, the Governor signed into law Public Law 1975 Chapter 217. This is known as the State Uniform Construction Code Act and it authorized the Department of Community Affairs of the State of New Jersey to adopt rules to regulate construction, alterations, renovations, rehabilitation, maintenance, occupancy and use of all buildings and structures. The act also provides for the establishment of minimum requirements for the education and licensing of code enforcement personnel.

The Legislature found that a multiplicity of construction codes existed at the time this code was established. These codes were impacted with many requirements and restrictions that varied from one municipality to another. They also found that municipalities were restricting certain materials and technologies so as the public was unable to conceive the benefits of these products.

Examples:

#1 Neighboring towns would have different requirements on plywood roof sheathing, plumbing fixtures, electrical components and their respective installations.

#2 Municipality A allows installation of prefab products and premanufactured systems, while Municipality B restricts these installations.

The way of ensuring complete statewide compliance was to establish a uniform construction code. Thereby, controlling or lowering the cost of housing and other construction, meanwhile maintaining the health, safety and welfare of the general public.

It was also noted that the model codes that were in use in the State and the geographical regions contiguous to New Jersey were widely adopted and therefore could be uniformly adopted by the state.

The Legislature declared at this time, even though the model codes and standards of these model code agencies would benefit New Jersey, some of the code items and standards were not consistent with the intent and purpose of the act.

Therefore, the Commissioner was given power to revise and adopt revisions of these codes and standards that are consistent with intent and purpose of the act, and later revisions to these codes that are beneficial to New Jersey.

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Specifically, the intent and purpose of the Uniform Construction Code Act is:

- to encourage innovation and economy in construction and to provide requirements for construction and construction materials consistent with nationally recognized standards;
- to formulate such requirements, to the extent practicable, in terms of performance objectives, so as to make adequate performance for the use intended as the test of acceptability;
- to permit the fullest extent feasible the use of modern technical methods, devices and improvements, including premanufactured systems, consistent with reasonable requirements for the health, safety, and welfare of occupants or users of buildings and structures;
- to eliminate restrictive, obsolete, conflicting and unnecessary construction regulations that tend to unnecessarily increase construction costs or retard the use of new materials, products or methods of construction or provide preferential treatment to types or classes of materials or products or methods of construction;
- to insure adequate maintenance of buildings and structures throughout the State and to adequately protect the health, safety and welfare of the people;
- to eliminate unnecessary duplication of effort and fees in the review of construction plans and the inspection of construction.

In order to implement the provisions, an advisory board was appointed by the Governor. The board is to assist and advise the Commissioner of the Department of Community Affairs in establishing the rules and the implementation of the legislation's provisions after deliberation.

CODE ADVISORY BOARD N.J.S. 52:27D-125

This board was established in order to assist and advise the Commissioner in the administration of this act. The board shall consist of 15 citizens, to be appointed by the Commissioner for a term of four years.

The board shall consist of: one architect registered in the State of New Jersey; two professional engineers licensed by the State of New Jersey, one of whom shall be a structural engineer and one of whom shall be a mechanical engineer; one municipal building official; one member of the building industry in the

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State of New Jersey; one public health official in the State of New Jersey; one licensed plumbing inspector in the State of New Jersey; one licensed electrical inspector in the State of New Jersey; one fire prevention inspector in the State of New Jersey and six members of the public, two of whom shall be experienced in representing consumers and one of whom shall be representative of the handicapped who shall serve as chairman of the subcode committee on the handicapped. The initial appointment of the representative of the handicapped shall be used to fill the first vacancy among the public members of the code advisory board occurring on or after the effective date of this amendatory and supplementary act. Of the 13 members first appointed, the Commissioner shall designate the appointees' terms so that three shall be appointed for terms of 1 year, three for terms of 2 years, three for terms of 3 years and four for terms of 4 years, and that the two additional members first appointed by the Commissioner pursuant to this amendatory act shall be appointed for 2 and 3 years respectively with such terms to be computed from February 4, 1976. Thereafter, members of the code advisory board shall be appointed for terms of 4 years.

Code advisory board members shall serve without compensation but shall be entitled to reimbursement for expense incurred in performance of their duties. Vacancies on the advisory board shall be filled for the unexpired term. Members may be removed by the Commissioner for cause.

SUBCODE COMMITTEES

The code advisory board has committees to advise for each subcode. Each such committee shall consist of one member of the code advisory board, who shall be chairman, and at least four citizens who are experienced and knowledgeable in matters related to the particular subcode. Each committee shall advise and assist the code advisory board in the performance of its responsibilities under the act for the subcode in question. Committee members shall serve without compensation and at the pleasure of the code advisory board.

The Commissioner accepted these recommendations and the rules and regulations were publicly advocated by him. After public hearings, these rules and regulations were adopted under the Administrative Procedure Act of the laws of 1968. They remain the Uniform Construction Code, Chapter 23, Title 5 of the New Jersey Administrative Code. These regulations took effect on January 1, 1977 and are known as the "Regulations for the New Jersey Uniform Construction Code."

USE OF MODEL CODES

Under the State Uniform Construction Code, the State has mandated use of model codes designed by model code agencies. These codes are adopted for use by the State and are used in each Subcode in its particular area of jurisdiction. It recommended to the Commissioner that the BOCA Basic Building Code be adopted

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as the building subcode, the National Standard Plumbing Code as the plumbing subcode, and the National Electrical Code as the electrical subcode. It also asked that sections of the building subcode and the electrical subcode be adopted as the fire protection subcode and the BOCA Basic Energy Conservation Code as the energy subcode. (Note: BOCA has been superseded by ICC.)

Under this procedure the Code has established a unified administrative structure. A municipality must use these model codes in establishing its enforcing agency. However, a municipality may choose not to have its own enforcing agency and may have the State assume the role as enforcing agency. As set forth within the code itself, should a construction projects' plans and specifications not be in compliance with the requirements of the model codes, the project plans and/ or specifications must be revised to meet the requirements of the codes. In fact if a project is released for construction and during field inspections violations are found, they must be abated in accordance with the Uniform Construction Code.

New Jersey was the first state ever to adopt a comprehensive Uniform Construction Code, which provided for building regulations, added professionalism, and licensed the enforcement officials giving them power to assure proper enforcement procedures. At the same time, this was done in such a manner as to retain a maximum of local options or "home rule." This program has become a model which many other states are studying for adoption in one form or another.

ADMINISTRATION AND ENFORCEMENT OF THE UCC

ADMINISTRATION AND ENFORCEMENT OF THE UCC

FORMS OF MUNICIPAL GOVERNMENT

There are five types of municipalities in New Jersey: cities, boroughs, towns, townships and villages. Under the laws by which they were originally organized, cities, boroughs and towns have a mayor and council, all of whom are directly elected by the voters. Townships and villages can have an alternative form of government where voters elect a committee that chooses a new mayor annually from among its members. Executive authority is vested in the mayor, though many municipalities follow the practice of assigning responsibility in different areas to individual council or committee members.

Title Forty of the annotated statutes of New Jersey outlines the different forms of government possible for each type of municipality in the State. All municipalities derive their power from the state and are creatures thereof. They can only enact and enforce laws which are granted to them by the State.

All municipal government is formed by the adoption of a specific charter which establishes how the municipality will function. This charter can be changed by the passage of referendum outlining a different method of governance. The smaller forms of government; villages and boroughs can also be absorbed into larger forms of government such as townships or towns by the passage of a referendum.

Municipalities can be organized with the mayor acting as the chief executive, as in the Faulkner Act. The township manager form makes an appointed official the chief executive of the municipality.

The first methodology has an elected official as the highest power responsible for the day to day operation of the government and the appointment of the directors of the various departments which make up the administration. The department heads answer directly to the mayor in this form. The council acts as the legislative branch of government and controls all expenditures. All members of council are free to interact with the department heads on a regular basis. There are several other permutations within the Faulkner Act which allows for a strong mayor and weak council or a weak mayor and a strong council. However, in each case, the administration is separated from the council and can be a cause for friction with both sides vying for power.

The second methodology has an appointed individual as the person responsible for day to day activity with the mayor and the council acting to both enact laws and establish policy. In this form of government the manager is responsible for all appointments. No elected official is permitted by this form to

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interact with the employees of the municipality. All questions or concerns raised by the elected officials are funneled through the manager. This method removes the employees from any sort of political pressure or interference and can be the most efficient but least responsive form.

The third methodology is the committee form of government which has an elected official acting as the liaison between each department and rest of the committee. This committee person is responsible for the activities of the department and reports back to the rest of the committee. This form places the employee most directly in the political environment. This can be the most responsive form of government since each employee answers directly to an elected official.

The municipality may also choose to be governed under forms of government different than traditional forms. Under the commission form of government, each of the elected Commissioners has executive authority in a particular area. The Optional Municipal Charter Law allows municipalities to choose between direct and indirect election of the mayor. It also allows the options of assigning executive responsibility to an appointed manager or delegating a substantial amount of that responsibility to an appointed administrator.

Generally, the official who exercises executive authority is the person to whom a Construction Official, who is ordinarily a department head, might expect to report. Depending on the form of government and local practices, this person might be the mayor, a Commissioner, a member of the council or committee, the manager or the administrator.

The appointing authority of any municipality shall have the right to appoint a Construction Official and any necessary subcode officials in order to establish an enforcing agency and to administer and enforce the Uniform Construction Code in its entirety. They may also appoint a Construction Board of Appeals (if done on a municipal level). Except as is otherwise specified, the enforcing agency under the regulations shall control all matters concerning construction, alterations, additions, repair, removal, demolition, use, location and occupancy of all buildings and structures and their service equipment shall apply to all new and existing buildings and structures. However, where the regulations govern specific requirements for construction; no municipal code or ordinance shall conflict, govern or have effect.

At the time when the State adopted the State Uniform Construction Code Act, a municipality that was operating under Title 11 of the Civil Service Statue had to grant classifications under the regulations to all employees of the building department who at the time of adoption were doing or held titles congruent to the construction industries. However, in January 1, 1981 a revision to the Statute stated that no person shall be appointed construction or subcode official in a municipality

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operating under Title 11, without having passed an examination administered by the Civil Service Commission, New Jersey Department of Personnel. Under the revised Statute of Title 11, a construction or subcode official may not be removed from office without just cause and a fair and impartial hearing at the local level, provided, however, that such a construction or subcode official may be removed to permit the appointment of a person by the Civil Service Commission.

Municipalities under non-civil service agreement shall appoint construction and subcode officials for a term of 4 years, and upon appointment to a second consecutive term of service be granted tenure and shall not be removed from office except for just cause after a fair and impartial hearing.

Where the appointing authority of a municipality appoints an enforcing agency by ordinance, it shall also set an enforcing agency fee schedule by which the operation of the agency is covered. However, that such fees shall not exceed the annual cost for the operation of the agency.

An ordinance may be adopted by the municipality waiving fees for construction which is done by or for the municipality within its boundaries. But this ordinance shall not be in conflict with any provisions of Section 3 of P.L. 1479,c 121 (C.52:27D-126c) or any standard pursuant thereto. Said municipality may also by ordinance, provide a waiver of enforcing agency fees for any corporation organized under the "New Jersey Nonprofit Corporation Act," NJS15A:1-1 et seq, that actively engages in constructing or rehabilitating housing units for occupancy by low or moderate income households.

PRIVATE ON-SITE INSPECTION AND PLAN REVIEW AGENCIES

A bidding process shall select a private on-site inspection agency. Their bids shall stipulate a percentage of the department's fees, which shall be charged. The agency shall supply a subcode official for specific subcodes. A Construction Official shall be appointed as per the regulations by the municipal government.

The contract for such enforcement shall be awarded to the bidder that offers to charge the lowest percentage of the Department's fees, and deemed able to perform their duties, for the entire contract period.

INTERLOCAL AGENCY

Any two or more municipalities, by ordinance may join to administer and enforce the regulations and any subcodes under the regulations.

The *Interlocal Service Act* governs this agreement. (NJSA 40:8A-1 et seq). Once this agreement is finalized, they must forward a copy of the ordinance to the Department. Such agreements shall provide a mechanism for administration and enforcement within each of the contracting municipalities. The contract shall stipulate that the term of the Construction Official and/or subcode officials shall be four years.

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These agencies shall, insofar as is practicable, be organized in the same manner, as municipal enforcing agencies. Interlocal agencies organized pursuant to the regulations shall administer and enforce the regulations, the same as municipal enforcing agencies.

Reciprocity in an enforcing agency may be established by two or more municipalities by ordinance joined 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.

CLASSIFICATION OF AGENCY

The local enforcing agency shall be classified in accordance with the license's held by the officials who were appointed to the positions of Construction Official and Building, Fire Protection, Plumbing and Electrical Subcode Official.

The types of technical licenses are classified into different categories.

RCS (residential and small commercial structure) Class 3
ICS (industrial and commercial structures) Class 2
HHS (high rise and hazardous structures) Class 1

CLASS 1 AGENCY – The lowest level of inspector license held in accordance with NJAC 5:23-5 by the Construction Official or any of the subcode officials appointed to constitute the enforcing agency is an HHS inspector license.

CLASS 2 AGENCY – The lowest level of inspector license held in accordance with NJAC 5:23-5 by the Construction Official or any of the subcode officials appointed to constitute the enforcing agency is an ICS inspector license.

CLASS 3 AGENCY – The lowest level of inspector license held in accordance with NJAC 5:23-5 by the Construction Official or any of the subcode officials appointed to constitute the enforcing agency is an RCS inspector license.

Any change in the classification of an enforcing agency shall be effective immediately upon a change in the level licensure of any of the officials appointed to constitute the enforcing agency. The ability of a municipality to accept an application for plan review shall be determined by the classification of that municipality as of the date of application.

Construction Official Commentary

SUBSTITUTE ADMINISTRATION AND ENFORCEMENT

Any municipality which shall not choose to establish and operate an enforcing agency pursuant to the act and the regulations shall notify the Department of this intent by registered or certified mail, return receipt requested. Such notice, in the form of a resolution, of the governing body shall state that the governing body requests the Department assume the task of administration and enforcement of the regulations.

A municipality does not normally share enforcement responsibilities with the State. The exception to this is in the enforcement of the elevator subcode. A municipality, having chosen to establish its own enforcing agency can still request that the Department assume responsibility for enforcement of the elevator subcode. Due to fact that this subcode uniquely provides for periodic inspections to ensure proper maintenance, it is sometimes more cost effective for municipalities not to have the added responsibilities of an ongoing maintenance inspection program. Where the Department may have to review and approve the installation of a new elevator device as part of a new construction permit, the municipality merely treats this as any other "prior approval". They receive plan approval prior to the issuance of a construction permit and inspection approval prior to the issuance of a certificate.

Whenever the Department shall have reasonable cause to believe that a local enforcing agency is not carrying out its function as intended by the Act and regulations it shall forward, by certified or registered mail, return receipt requested, to the governing body, to the Construction Official, and to the municipal manager or administrator, a notice stating the nature of the alleged failure of the local enforcing agency to perform, the implications of such failure, and a statement setting forth the corrective action required to be taken by the local enforcing agency.

CONSTRUCTION BOARD OF APPEALS

There shall be a Construction Board of Appeals established for each county; to hear appeals from decisions by enforcing agencies within its jurisdiction, provided the municipality does not have its own appeal board or combined municipalities joint board. Chapter 23A of the Uniform Construction Code expands on the duties of the board of appeals that will be further expanded within this manual.

ENFORCEMENT ACTIVITIES RESERVED FOR THE STATE

Department of Community Affairs: The Division of Codes and Standards shall administer and enforce the regulations in regard to State owned buildings and structures.

The Division shall be responsible for administering and enforcing the regulations regard to amusement rides; ski lifts; high pressure boilers; refrigeration systems; pressure vessels and liquefied petroleum gas installation (except one and two family dwellings).

Construction Official Commentary

MUNICIPAL ENFORCING AGENCIES

Pursuant to the act and the regulations, a municipality that is seeking to enforce and operate an enforcing agency, shall notify the Department. This procedure must be accomplished by sending the Department a certified or registered mail-return receipt. Such notice shall be in the form of a resolution of the governing body and shall state whether the agency will be municipal, or interlocal.

A municipality which chooses to be it's own enforcing agency shall have complete control within the regulations.

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 not to enforce the code as per NJAC 5:23-4.3.

STATE UNIFORM CONSTRUCTION CODE ACT

A construction or subcode official, to be eligible for appointment in civil service or non civil service municipalities, shall be certified by the State of New Jersey and shall have had at least three (3) years experience in construction, design or supervision as a licensed engineer or registered architect; or five (5) years experience in construction, design, or supervision as an architect or engineer with a bachelor's degree from an accredited institution of higher education; or ten (10) years experience in construction, design or supervision as a journeyman in a trade or as a contractor. A subcode official shall, pursuant to any subcode which he administers, pass upon: (1) matters relative to the code, manner of construction or materials to be used in the erection or alteration of buildings or structures, except as to any such matter foreclosed by State approval pursuant to this act, and (2) actual execution of the approved plans and the installation of the materials approved by the State. The Construction Official in each municipality shall be the chief administrator of the "enforcing agency." He shall have the power to overrule a determination of a subcode official based on an interpretation of a substantive provision of the subcode which such subcode official administers, only if the Construction Official is qualified to act pursuant to this act as a subcode official for such subcode. He may serve as subcode official for any subcode which he is qualified under this act to administer. A subcode official or municipal engineer may serve as a Construction Official if otherwise qualified under the provisions of this act. The municipal enforcing agency shall require compliance with the provisions of the code, of all rules lawfully adopted and promulgated thereunder and of laws relating to the construction, alteration, repair, removal, demolition and integral equipment and location, occupancy and maintenance of buildings and structures, except as may be otherwise provided for.

Two or more municipalities may provide by ordinance, subject to regulations

Construction Official Commentary

established by the Commissioner, for the joint appointment of a Construction Official and subcode official for the purpose of enforcing the provisions of the code in the same manner.

No person shall act as a Construction Official or subcode official for any municipality unless the Commissioner determines that said person is so qualified, except for the following: (1) a municipal Construction Official or subcode official holding office under permanent civil service status, or tenure as otherwise provided by law on the effective date of this act or within one year thereafter and (2) a municipal Construction Official or subcode official holding office without such permanent civil service status or tenure on the effective date of this act or within one year thereafter; provided said Construction Official or subcode official not having such permanent civil service status or tenure shall be certified in accordance with this act within four (4) years of the effective date thereof, provided further that a person holding on the effective date of this act a valid plumbing inspector's license from the Department of Health pursuant to Title 26 of the Revised Statutes may serve as a plumbing subcode official and a person holding on the effective date of this act a valid electrical inspector's license from the Board of Public Utilities pursuant to Title 48 of the Revised Statutes may serve as an electrical subcode official. The Commissioner, after consultation with the code advisory board, may authorize the preparation and conducting of oral, written and practical examinations to determine if a person is qualified by this act to be eligible to be a Construction Official or subcode official or, in the alternative, may accept successful completion of programs of training as proof of qualification within the meaning of this act. Upon a determination of qualification, the Commissioner shall issue or cause to be issued a certificate to the Construction Official or subcode official or trainee stating that he is so certified. The Commissioner, after consultation with the code advisory board, may establish classes of certification that will recognize the varying complexities of code enforcement in the municipalities within the State. The Commissioner shall, after consultation with the code advisory board, provide for educational programs designed to train and assist Construction Officials and subcode officials in carrying out their responsibilities.

Whenever the Commissioner is required by the terms of this subsection to consult with the code advisory board and the matter in question concerns plumbing subcode officials, the Commissioner shall also consult with the Public Health Council and Commissioner of Health.

The Commissioner, after consultation with the Code Advisory Board, may periodically require that each Construction Official and subcode official demonstrate a working knowledge of innovations in construction technology and materials, recent changes in and additions to the relevant portions of the State Uniform Construction Code, and current standards of professional ethics and legal responsibility; or, in

Construction Official Commentary

the alternative, the Commissioner, after consultation with the code advisory board, may accept successful completion of appropriate programs of training as proof of such working knowledge.

COMMERCIAL FARM BUILDINGS NJAC 5:23-3.2(d)

This section of the Uniform Construction Code modifies construction requirements for commercial farm buildings. Commercial farm buildings are those buildings on a farm whose main use is related to the production of agricultural or horticultural products. The farm must annually produce no less than \$2,500.00 worth of agricultural or horticultural products. Commercial farm buildings include stall barns, horse arenas, greenhouses, buildings storing agricultural products or farm machinery and similar uses.

Buildings containing any of the following uses may not be considered in the definition of a commercial farm building:

- residential structures;
- high hazard facilities;
- processing facilities;
- mercantile structures;
- offices greater than 1,200 square feet or more than 11 occupants; or
- buildings that contain any use not included in the definition of commercial farm building, except incidental offices. *(Incidental: 10 or fewer occupants, floor area not in excess of 1,200 square feet, and direct exit to the exterior.)*

Commercial farm buildings are to be constructed in accordance with the code requirements applicable to the S-2 Use Group with the exception of the provisions outlined within this section.

Pre-engineered grain bins, silos and farm impoundments do not require a construction permit. However, all on site construction of foundations and plumbing and electrical connections are subject to the requirements of the Uniform Construction Code.

Storage within a commercial farm building is not subject to limitation. However, hazardous material storage shall not exceed the allowable exempt amounts of the tables referenced in Section 307 of the building subcode unless they are separated with properly constructed fire separation assemblies.

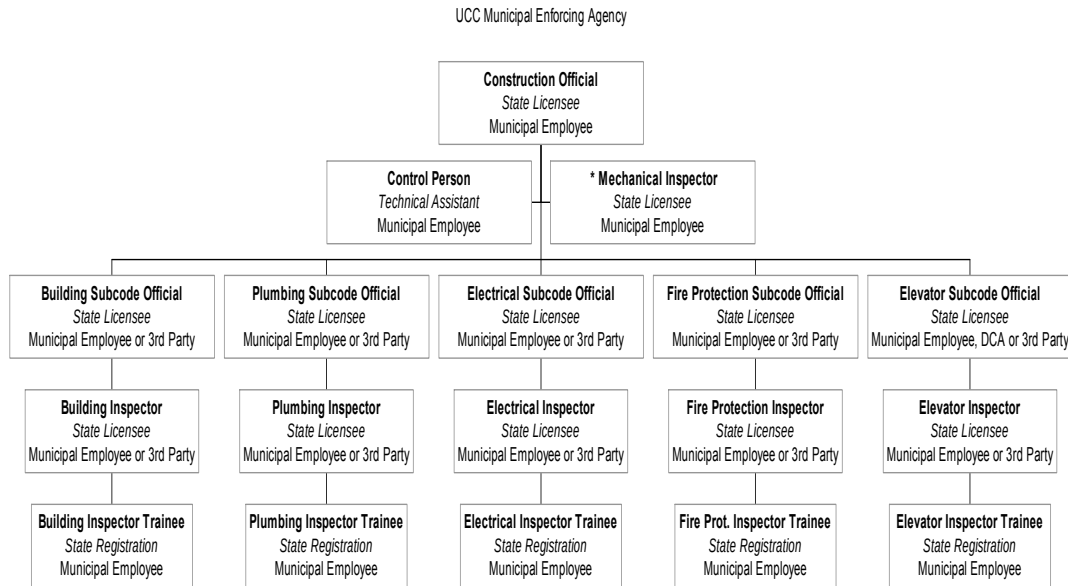
Commercial farm buildings may be used as a place of public assembly for not more than fifteen days in a calendar year as provided for within this section. A public assembly shall be a gathering of fifty or more persons. A permit shall be obtained from the local fire official pursuant to the Uniform Fire Safety Act.

Construction Official Commentary

PERSONNEL

Construction Official Commentary

PERSONNEL



* Note: An enforcing agency must utilize NJAC 5:23-3.4(d) for the services of **mechanical inspections** for single family dwellings; if no mechanical inspector is employed, the plumbing subcode official will serve this duty. This inspector is certified to perform the inspections required under various subcodes involved in the installation of mechanical systems in one and two family dwellings. Since they are not a Subcode Official in and of themselves, they must inspect on behalf of all the Subcode officials who have responsibilities for mechanical systems. Accordingly, those Subcode Officials retain the responsibility for a code compliant installation.

POSITIONS

Construction Official – The Construction Official (CO) is the chief administrator of the local enforcing agency (LEA). His/her primary responsibilities include coordinating the activities of all the personnel assigned to the agency (including management of private on site inspection agencies), reviewing permit and certificate applications, overseeing permit and certificate issuance, reviewing violation notices prior to issuance and assigning penalties when appropriate. The CO will also communicate with architects, engineers and contractors as well as assist and educate the public. The CO must be able to deal with complaints from the public regarding construction activities within the municipality. The CO establishes and enforces agency policies to assure compliance with the Uniform Construction Code. The CO is also responsible for budget preparation and proper accounting of the budget, annual review and reporting to the Township Committee

Construction Official Commentary

regarding the fee schedule, as well as enforcement of any municipal policies, which affect LEA.

Subcode Officials – There are five Subcode Official positions in each jurisdiction. His/her responsibilities include permit and plan review, communicating with architects, engineers and contractors as well as assisting and educating the public. Depending on the size of the department the Subcode Official also supervises inspectors employed by the department for that subcode. He/she will also perform inspections in accordance with the regulations. The Subcode Officials must also assist the CO as needed.

Inspectors – There may be one or more inspectors under each subcode depending upon the department size. The inspector performs inspections in accordance with his/her Subcode. The inspector must have an ability to review and interpret construction plans and methods. His/her responsibilities may also include assisting with permit and plan review. The inspector must be able to communicate with architects, engineers and contractors as well as to assist and educate the public. The inspectors must also assist the CO as needed.

Interface – Nothing shall prevent one person from serving in more than one position for which he is certified and qualified. However, more than one person shall not be appointed concurrently to the same position. No two people can sit in the same chair.

Technical Assistants – The TA provides technical assistance in the issuance of construction permits in order to assure compliance with the provisions of the New Jersey Uniform Construction Code. The appointing authority may establish positions other than those provided in N.J.A.C. 5:23-5 as is deemed necessary. The Commissioner reserves the right to establish categories of certification for such positions. The Construction Official or appropriate subcode official shall be responsible for the supervision of any such personnel.

Secretaries – The Secretary works under the direction of the Technical Assistant to assist the Technical Assistant, Construction Official and other staff in the day to day operations of the office.

Trainees – Enforcing agencies may establish code enforcement trainee positions subject to the rules found in NJAC 5:23-5.4 (d).

The municipality shall provide the Construction Official, each subcode official and each inspector with personal identification, which includes at least the name of the municipality, and the name, title and photograph of the individual. The identification shall be validated by the municipality.

Construction Official Commentary

A municipality may, in its discretion, employ a mechanical inspector to perform plan review and mechanical inspection, with oversight by a designated subcode official, for Use Group R-3 or R-5 structures. Alternatively, the construction official shall assign mechanical-inspector duties to the Plumbing Subcode Official.

The Construction Official and the subcode officials shall be available for consultation and discussion during normal business hours at scheduled times to be determined by the Construction Official. All inspections shall take place between 9:00 AM and 5:00 PM on business days or while construction is taking place, or in the case of emergency, or with the permission of the owner or his representative.

The municipality shall ensure that the enforcing agency has adequate staff to review plans, applications, specifications and to schedule and perform inspections in a timely manner.

APPOINTMENTS

The office should be staffed with qualified personnel.

Administration and Enforcement NJS 52:27D-126.

The appointing authority of any municipality shall appoint a Construction Official and any necessary subcode officials to administer and enforce the code and a Construction Board of Appeals to hear and decide appeals from decisions made by said Construction Official and subcode officials for the administration and enforcement of the code.

Although the act seems to be clear on this point, we must look further into the Uniform Construction Code for additional provisions concerning reappointment- NJAC 5:23-4.4(a) 9 states:

Provisions concerning reappointment of construction and subcode officials in non-civil service municipalities are as follows:

- i. At least 30 days prior to the expiration of the statutory four-year term of office of a construction or subcode official, the appointing authority shall give written notice to the official indicating whether or not he or she is going to be re-appointed.
- ii. In the event that the official is neither re-appointed, nor given written notice that he or she is not being re-appointed, prior to the date of expiration of the statutory four-year term of office, the official shall be deemed to have been appointed to serve in an acting capacity for a period of not more than 60 days. The municipality is not relieved of

Construction Official Commentary

the obligation to notify the Department within seven days any time any acting appointment will exceed 30 days.

- iii. In the event that the official is neither re-appointed, nor given written he or she is not being re-appointed, prior to the expiration of the 60-day period following the date of expiration of the prior statutory four year term of office, the Department, in such circumstance, shall not extend any such acting appointment and the official shall be deemed to have been re-appointed, such reappointment being effective retroactively to the date of expiration of the prior statutory four-year term.

Acting Appointments NJAC 5:23-4.4 (a) 6.

A municipality shall appoint an acting Construction Official or subcode official any time the absence of such official would impede orderly administration of the Uniform Construction Code and other duties mandated by the municipality. Acting appointments shall be accomplished by any mechanism acceptable to the municipality; providing, however, that a written record shall be kept. Notice to the Department shall be provided within seven days any time an appointment is made for more than 30 days. Acting appointments may not be made for longer than 60 days, nor may they be extended or renewed beyond 60 days unless specific authority to do so is granted in writing by the Department.

- i. Only an individual licensed as a Construction Official may be appointed as an acting Construction Official and only an individual licensed as a subcode official in a particular subcode may be appointed as an acting subcode official for that subcode. The technical license level of an acting construction or subcode official shall be superior or parallel to the enforcing agency classification of the municipality or such municipal classification shall be downgraded to the technical license level of the acting official for the period of time in the position. Employees of private on-site inspection agencies shall not serve as acting Construction Officials. Employees of private on-site inspection agencies may serve as acting subcode officials, provided that notice of any such appointment shall be given to the Department by the Construction Official within seven (7) days of the making of the appointment and that such notice shall contain information as to the form and amount of the payment being made to the agency for the services of the acting subcode officials.
- ii. Acting appointments shall not constitute the statutory four-year term for construction and subcode officials or any portion thereof.

Construction Official Commentary

- iii. Conflict of interest provisions set forth shall apply to acting officials and nothing shall be interpreted as prohibiting licensed officials from serving in more than one municipality in regular or acting appointments.
- iv. Nothing in 5:23-4.4(b) shall be interpreted as prohibiting licensed officials from serving in more than one municipality in regular or acting appointments.

Case Notes

A municipal construction official's appearance for work for eleven days, after his four-year term expired, did not confer tenure on him on basis of appointment to second consecutive term.

Cutler v. Borough of Westwood, 295 N.J. Super. 344, 685 A-2d 44 (A.D.1996)

Townships failure to make a proper temporary appointment in conformance with regulation resulted in plaintiffs appointment as subcode plumbing inspector becoming one of tenure pursuant to N.J.S.A. 52:27D-126(b).

DeStefano v. Washington Twp., 220 N.J. Super. 273, 531 A-2d 1090 (L.1987).

In New Jersey all subcode officials and inspection personnel must be licensed in conformance with the regulations. *N.J.A.C. 5:23-5.1* explains the scope, and intent of the UCC as it relates to "Licensing of code enforcement officials." Further on in 5:23-5.3 through 5.25 the "types of licenses" and requirements for obtaining and maintaining licenses is explained.

In addition, there should be a qualified technical assistant and sufficient clerical help to assist in the processing of inspection reports, keep accurate records of permit logs and Construction Official logs, prepare monthly reports, and perform other similar duties of the office. The UCC *Municipal Procedures Manual* is a useful guide for record keeping and administration of the UCC however there are many other administrative tasks that the clerical staff will be relied upon to perform such as: interacting with other departments like the purchasing department when supplies are needed, or they may also assist the Construction Official in collection, recording, and forwarding of time keeping to the personnel department.

Also, all of the staff, including subcode officials and inspectors, should have a working knowledge of computer operation. The technical assistant and at least one other clerical person should be trained in the computer operation available from the Department on the Uniform Construction Code Activity Reporting System (UCCARS). Computerized recording and reporting of UCC activity has gone through many improvements and has become a key office management tool for many agencies. There are other private programs now available for code enforcement management and reporting. The Construction Official should take care when considering the purchase and implementation of these programs as these programs can have a profound impact, positive or negative, on the agency depending on the level of service provided and compatibility of the system to your operation.

Construction Official Commentary

If there is a change of technical assistants, any replacement should take training to familiarize themselves with their duties. A certification program for “Technical Assistant Office of the Construction Official” is now available through the Department’s Education Unit, Bureau of Code Services.

Staffing procedures shall not permit the establishment or continuation of an inspection force insufficient to meet the municipality's needs' (N.J.A.C 5:23-4.3(d)2). Justification and selection of additional staff can be a challenging task. In justifying your need for additional staff you might tailor your approach to the administration in your jurisdiction. Are they concerned with service to the public? Revenue? Cost cutting? Once you have an idea of how to approach them you can begin to build your case. You can use “time and motion” studies. You can consider factors such as number of permits written, fees received, valuation figures, number of inspections, etc. You can also request an evaluation of your department’s staffing needs from DCA Office of Regulatory Affairs. Be sure that your presentation is clear, factual, specific, and most of all defensible. Selection requires careful consideration as well. You will need to evaluate personality as well as ability. It is perhaps as important to be proficient in human relations as it is to possess technical skills.

The ideal situation would be to maintain a staff of full-time subcode officials and a full-time Construction Official. However, this is not always the case. In some cases the construction activity does not warrant these conditions. The Construction Official should carefully review all the construction activity taking place in the municipality and determine the staff required to accomplish the necessary plan review, inspections, reports, and other routine duties required by the regulations, keeping in mind that many of these duties are required within a specific time frame. The regulations and the organizational chart shown above are not enough however to enable you as the Construction Official to develop the optimum code enforcement organization for your particular jurisdiction. Consideration must be given to factors such as the work environment, size, and makeup of the community. If you are working in a small suburban community that deals with mostly residential construction, it is unlikely that you will need inspectors that are highly specialized in hazardous or high rise type construction. An inspector who is more familiar with all aspects of residential construction may prove to be more beneficial. On the other hand, if your community is large and has complex structures, it is critical to select highly trained specialists to administer the code. Sending under-qualified inspectors to this type of project can cause serious problems that are not easily fixed.

Construction Official Commentary

The Construction Official must also establish the day-to-day operating procedures for the agency and coordinate the activities of the subcode officials. This is an oversimplified description of a complex task, especially in an agency with part-time officials.

Some issues for consideration are the tasks to be accomplished and the coordination required to do them within the required time frames. All applications for construction permits and amendments must be reviewed and approved or denied in writing within twenty (20) business days of their submission. This requires each subcode official to review an application and report back to the Construction Official any violations to the subcode or to sign an approval for issuance. Each subcode official does not have the luxury of taking the full twenty days for review. The Construction Official must have time to review the reports of all subcode officials whose review is required. There are also provisions under *NJAC 5:23-3.4* that require joint enforcement by subcode officials. The Construction Official must also have time to resolve, if possible, differences of interpretation and prepare a permit for written denial or issuance as the case may be.

The Construction Official should develop a system with the technical assistant whereby receipt of a *complete application* requires that each subcode official's review and report be completed by a specific date. The due date should allow sufficient time for the subcode official to complete a detailed review and written report and still allow time for the Construction Official's review and action.

The subcode official has the duty of enforcing the technical provisions of his or her designated subcode. Generally, the Construction Official cannot overrule a subcode official's decision unless the Construction Official holds a technical license in that subcode's discipline. However, in the review of a **variation application**, if subcode officials having joint enforcement responsibility have differences in interpretation or rulings, the Construction Official must choose which determination or ruling is to be followed and take responsibility for the decision. Neither the type of technical license nor the class of license of the Construction Official has bearing on this matter.

The Construction Official must read the interpretation of each subcode official and the reasoning for the ruling. The section of the code involved should be reviewed and the intent of public health, safety, and welfare considered. The situation should be discussed with each of the subcode officials, preferably at a joint meeting, and then the decision rendered. It may be advisable to explain the reasoning for the decision with the subcode officials involved. This could accomplish two things: first, to explain to the subcode officials why the one interpretation was overruled or modified; and second, to help establish, with the

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subcode officials, a reasoning process that may avoid differences in interpretations from occurring in future situations.

The regulations (N.J.A.C 5:23-4.4.(a)3) permit a qualified person to serve in more than one position, and in most cases, the Construction Official also serves as one of the subcode officials. In these cases caution should be taken to assure that all duties are performed with care and thoroughness. The subcode official's position requires technical attention to detail, from plan review through the inspection phases of construction. Concurrently, the Construction Official's position requires the managerial skills of dealing with the public, other departments and agencies, personnel, and governing bodies. These administrative tasks can be time consuming and may tend to detract attention from the detail required in the technical field. Generally, indications are that serving as both Construction Official and one or more subcode official positions is difficult and time consuming and can only be accomplished correctly and well in municipalities with a minimal amount of construction activity.

The Construction Official, in addition to having competent licensed subcode officials must also have sufficient support staff to perform the normal office duties of filing, correspondence, telephones, etc.

The Uniform Construction Code has developed a system which requires complete recording of all information concerning applications, permits, inspections, Certificates of Approval, Compliance, and Occupancy, and on-going inspections. While it is the responsibility of each subcode official to record plan review and inspection reports and records, it is the responsibility of the Construction Official to make sure that all these inspection reports and plan review records are coordinated and placed in the permit record file. The physical task of this is normally assigned to the technical assistant.

Each person within the enforcing agency is an essential part of enforcing the codes and regulations. The technical assistant is the one person that physically coordinates these efforts and records them in the proper place. A well-trained technical assistant is an invaluable asset to the Construction Official. This person, with clerical staff (if any) to assist, will record progress of plan review, take requests for inspection, assist in scheduling inspections, record inspection reports, and perform the other record-keeping tasks of the agency.

The technical assistant is usually the first person with whom the public comes in contact. In many cases the technical assistant receives applications when no one else is in the office. It is essential that the technical assistant be thoroughly trained in the procedures of the Uniform Construction Code.

Construction Official Commentary

The *Municipal Procedures Manual* issued by the Department should be in each office for reference, and the Construction Official should see that each technical assistant is trained in the proper execution of the system. In addition, each subcode official should be required to establish a routine to coordinate their inspection reports with the technical assistant so that the status of a permit may be checked at any time.

In an administrative position it will become necessary to deal with personnel problems. There is no standard formula to cover these situations. Every person has an individual personality. However, there are some basic ideas which should be kept in mind:

1. Every person should be treated the same. Do not play favorites. Always be consistent and compliment an employee when work is well done.
2. Do not criticize or discipline anyone in front of other members of the staff.
3. Listen to complaints and suggestions of staff personnel. Do not forget there may be a better or more efficient way to accomplish a job.
4. If discipline is required, take the necessary action promptly. The example set will indicate to others that while you are fair, violation of established rules cannot be tolerated.
5. Be supportive of your staff. Defend them when they are right. Encourage them to continue training to stay current and maintain the skills of their profession.

Always keep in mind that a happy and efficient staff will be supportive and loyal to you and will reflect favorably on you as a manager.

Another point the Construction Official must be aware of is the responsibility to monitor the outside business activities of the subcode officials, inspectors, plan reviewers, or trainees of the agency. The regulations prohibit these persons from engaging for economic gain in any way, directly or indirectly, with businesses in the construction field both in the municipality and adjacent municipalities (N.J.A.C. 5:23-4.5 (j) 1). Conflict of interest is a serious matter, and compliance by agency employees is the responsibility of the Construction Official. This regulation provides no person employed by an enforcing agency as Construction Official, subcode official, or inspector shall carry out any inspection or enforcement procedures, such as plan review with respect to any property or business in which a member of his or her immediate family has an economic interest. Additionally, no person employed, by a municipal enforcing agency may be involved in any court proceeding within the

Construction Official Commentary

State as a paid expert witness in any proceeding involving the enforcement of the UCC except on behalf of another enforcing agency or as a court-appointed witness.

Personnel problems may arise from time to time concerning vacation schedules and time off for illness. The subcode official's duties must be provided for in either of the foregoing instances. The Construction Official should, in cooperation with the subcode official, provide for the covering of the position. This may be possible through an agreement with an enforcing agency in an adjacent or neighboring community. Alternatively, one of the subcode officials may also hold the necessary Construction Official license and could assume the position temporarily. N.J.A.C. 5:23-4.4(a)6 covers the appointment of acting construction and subcode officials.

It is more difficult in most cases to provide for the technical assistant's absence. If there is more than one clerical person in the office it is advisable to require that all clerical persons be cross trained in the procedures of the technical assistant position, rather than specializing each person for certain tasks. If there is only one person performing all clerical work in addition to the technical assistant duties, some other method of providing backup for this position will be necessary. One possibility is to train a clerk from another department in the municipality to assist in emergency situations.

The Construction Official cannot be expected to know every detail of the work in the office. The Construction Official should, however, be aware of the problem areas and know the actions being taken to correct them. The staff should keep the Construction Official informed of these problem areas. It is good practice to schedule staff meetings at regular intervals to discuss problems, suggestions, department needs, and new procedures which may become necessary.

A good Construction Official should exercise control over the office and staff, not dominate it

CONTRACTED SERVICE

Private On-Site Plan Review and Inspection Agencies

Prior to the Uniform Construction Code, electrical inspection agencies were regulated by the State Board of Public Utilities. NJ DCA regulations initially required cost bidding under the Local Public Contracts Law and in 1979 private inspection services were extended to other Subcodes. In 1984, the DCA required that all fees be identical to the State's fee schedule and that bidding selection should be based on the most qualified and performance. In 1991, elevator inspections were added with the adoption of the elevator subcode and in 1995 a modified version of bidding based on costs was reinstated.

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In accordance with N.J.A.C. 5:23- 4.12, private inspection agencies must be authorized to offer plan review and inspection services. This authorization is valid for one (1) year and must be accompanied by an initial payment of \$ 2,800.00 per subcode. An agency is re-authorized each year upon payment of \$ 1,400.00 per subcode plus 5% of the prior year's gross receipts. Authorization is based on careful review of the qualification of management and technical personnel, the fiscal integrity of the applicant, the capability to perform required services and submission of a conflict of interest statement.

Each agency is responsible for maintenance of records, and must maintain an adequate number of certified staff to perform plan reviews for all classes of structures. Additionally, they must provide adequate supervision of employees and carry general liability insurance of \$1,000,000 for each person and occurrence. They must carry until full completion, all projects initiated during contract period as well as prepare and submit all required reports to the State and process and return all documents to the municipality. Lastly, they must ensure attendance of technical/supervisory employees at required training programs.

Municipalities seeking inspection services must send Requests for Proposals (RFP) to all agencies authorized by the State to provide the subcode for which inspection services are sought. These must be sent certified mail, return receipt requested. The RFP must specify the term of the contacts, which may be one, two or three years. It must also specify any local procedural requirements including staffing and response time exceeding the minimum required by the UCC. Finally, it must specify that a written bid, separately sealed, is required along with a separately sealed qualification statement. And as with any bidding procedure, it must state the time and date by which qualification statements and bids be received (this may not be less than 30 days following the mailing date of the RFP) and the name and address of the municipal official receiving the bids.

Municipalities may not require errors and omission insurance or an amount exceeding the \$ 1,000,000 required by the UCC. Performance and/or surety bonds may not be required.

When responding to the RFP, sealed bids must set forth the fees to be charged for the subcode services performed in the municipality. These fees must be expressed as a percentage by subcode of department fees from N.J.A.C. 5:23 4.20 and may not exceed 100% of the department fees. Qualification statements must contain all information required under N.J.A.C. 5:23 - 4.5A (d) 1 through 13. No additional information may be required. Municipalities may disqualify any proposal lacking the required information.

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CASE NOTES

Requests for Proposals

Blue Valley Township decided to ask for bids from private inspection agencies to enforce the plumbing subcode. The Construction Official conferred with the municipal purchasing officer on how to set up the RFPs. Together they prepared a RFP package, and sent it out to all the State authorized agencies for the subcode. The municipality wanted an agreement that would build in as many bidders to include commitments exceeding the minimum UCC time requirements for plan reviews and inspections. Also, the bidders were required to indicate what kind of vehicles and communication devices their representatives would use when working in the Township. The RFP required the bidders to commit to a "no fault" cancellation clause in the subcode contract. One of the private inspection agencies complained that these requirements were in violation of N.J.A.C. 5:234.5A in that they were exceeding the requirements provided in the code. The municipality responded that they had to look after their own interest, and that this was the way they had done business with public works contractors under the Local Public Contracts Law. The Department of Community Affairs (DCA) was asked to decide the matter.

Conclusion: DCA decided that while the regulations permitted the more stringent time requirements for plan reviews and inspections, the municipality could not qualify the agencies on the basis of vehicles and communication equipment. The State also threw out the "no fault" clause as part of the qualification statement. The cancellation clause could later be written into the contract as a "boiler plate" item.

Opening Bids – Awarding the Contract

The bid receiver should forward all qualification statements to the Construction Official for review. The Construction Official will then report his/her recommendation in writing to governing body. The governing body, after consultation with the Construction Official, qualifies the agencies then unseals the bids of only the qualified agencies and accepts the lowest bid. Finally, the governing body must accept the low bid or reject all bids within 30 days of the bid opening.

An executed contract is required prior to the enforcement of any subcode. Except as stated in the UCC regulations, the executed contract must be in accordance with the "Local Public Contracts Law" and executed not less than 30 days prior to the beginning of the contract period. The contract is awarded for the term specified in the RFP which may be one, two or three years.

The contract must set forth the amounts to be paid by the municipality to the agency. *(This is the amount established for the particular subcode in N.J.A.C. 5:23-4.20 times the percentage bid by the agency.)* It must also provide the billing and payment schedule required in N.J.A.C. 5:23-4.5A (j) 1–5, as well as identify the

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private agency employee who will act for the agency as the responsible subcode official under the contract. Lastly, a copy of each executed contract and all amendments of same must be submitted to the Department of Community Affairs by the agency at least ten (10) days prior to the effective date of the contract.

There are allowances for short-term subcode services for emergency situations. These are limited to 60 days and bidding is not required. However, the Construction Official must notify the DCA of the name of individual assigned by the agency to the municipality, and the method and form of payment from the municipality to the agency. *(no method is currently specified by the DCA)* Fees charged to permit applicants must adhere to the municipal fee schedule.

The Construction Official must remember to file with the Department of Community Affairs, a Notice of Execution of each contract within ten (10) days after the effective date of the contract. The contract period does not begin until at least 30 days after the municipality enters into the contract with the agency. He/she must also be sure that the municipality amends the local fee ordinance to reflect any fee changes prior to the enforcement of the subcode under the contract. Lastly, the Construction Official must retain all documents such as RFPs, qualification statements and bids since these are public documents and open to public review.

In accordance with N.J.A.C. 5:23-4.13(f), the inspection agency must provide the Construction Official with a schedule of times when the agency business office is open. Furthermore, the private on-site agency shall act in place of the municipal subcode official and perform duties of same as defined in the regulations. They must perform all required inspections and re-inspections, perform non-destructive test if required by the rules and testify at hearings or in court. They must also issue all documentation and certifications, such as cut-in cards to utilities and public agencies as required as well as provide technical assistance to applicants in preparation of the construction permit application.

All agency Subcode Officials / Inspectors must report to the Construction Official and are subject to his/her rulings, directives and orders pursuant to N.J.A.C. 5:23-4.13(d) and 5:23-4.14(e) 3. Remember, the Construction Official is the sole agent for the collection of all fees and penalties in accordance with N.J.A.C. 5-23 - 4.14(d).

The Construction Official must insure that all required inspections are scheduled and performed and that they take place between 9:00 a.m. and 5:00 p.m., during emergencies, with permission or when work is actually being conducted. Additionally, the agency must process and return all documents, plans, specifications, and applications within the time frame specified by the rules or the contract with the municipality, whichever is the lesser.

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The contract shall provide that amounts due to the private agency be paid as follows:

- twenty percent (20%) upon issuance of the construction permit,
- sixty percent (60%) due 30 days thereafter;
- twenty percent (20%) due upon completion, as evidenced by issuance of inspection sticker approval for the subcode.

Certificate of occupancy or certificate of approval charges are due upon issuance of the certificate and elevator inspection charges due upon issuance of certificate of compliance or notice of unsafe structure. All fees shall be billed within 30 days of coming due and paid within 30 days of billing.

An on-site agency may employ municipal subcode officials and inspectors on a part time basis. This employment, however, shall be subject to conditions. The on-site inspection agency can only employ municipal subcode officials and inspectors. A municipal Construction Official shall not be employed by an agency in any capacity. The written approval, of the Construction Official supervising a municipal subcode official or inspector, shall be obtained by the on-site inspection agency prior to hiring such municipal subcode official or inspector. And, when an on-site inspection agency hires a municipal subcode official or inspector, they shall thereupon waive the right to bid or contract in the employed subcode official or inspector municipality or municipalities.

Furthermore, as provided for in the regulations “No person employed by, or associated with, an on-site inspection agency as an employee, proprietor, officer, director, partner or manager shall be permitted to retain such employment or association if he or she accepts employment with a municipality as a subcode official or inspector enforcing a subcode that was the subject of a contract or proposed contract for which the on-site agency was an unsuccessful bidder at any time during the previous 24-month period.”

If an agency employee terminates employment with the agency and accepts employment in a municipality that was under contract with the agency, the agency shall waive the right to contract with that municipality for a period of two years.

ENFORCING AGENCY FEES/BUDGET

Construction Official Commentary

ENFORCING AGENCY FEES/BUDGET

MUNICIPAL BUDGET MANAGEMENT

One of the most time consuming tasks of the Construction Official is managing your budget and making sure that your budget reflects the goals and objectives of your department.

In this section we establish how to identify what your goals are and set what your staffing should be to accomplish these goals. This includes not only the statutory responsibility outlined under the Uniform Construction Code, but also any other responsibilities that the municipalities may impose on your department. The hardest part of managing this type of department deals with the control of the funding for your department and the funds that you collect in the issuance of permits. You must be cognizant of the budgetary laws which govern ordering products, accepting bids, and controlling your spending. For example, all monies collected must be processed within 48 hours of receipt by your technical assistant.

Where the appointing authority of any municipality shall establish an enforcing agency and Construction Board of Appeals pursuant to section 8 of P.L.1975, c. 217, the municipal governing body by ordinance, in accordance with standards established by the Commissioner, shall set enforcing agency fees for plan review, construction permit, certificate of occupancy, demolition permit, moving of building permit, elevator permit and sign permit, provided, however, that such fees shall not exceed the annual costs for the operation of the enforcing agency.

One of the most important responsibilities that you will have as the Construction Official and head of the building department is to prepare the budget. This is where your governing body gets a very visible look at you as a manager. The budget process is required to be public so the residents of your community will also be looking over your shoulder and rating you. Budgeting is the principle public policy process. Every activity, decision, and program you control can be expressed in the financial language of the budget.

Budget

The budget is where you determine what resources the department will need in order to complete all of your responsibilities required under the Uniform Construction Code and anything else that your governing body wants you to do. You must put in writing how much money it will cost to perform the inspections; issue the permits and enforce the codes. You determine how many inspectors and clerical staff, vehicles, computers and paper clips. You must sell to the governing body the need to spend all of this money and project how much money you will collect to offset this cost.

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The budget cycle is based each year on a regular set of institutional procedures which encompass a sequence of decisions. In most New Jersey municipalities this process is divided into five different stages:

- Preparation of the budget requests by the department head
- Formulation of recommendations by the chief finance officer and the municipal administrator
- Review and adoption of the budget ordinance by the municipal governing body and approval by the State as to form and content of the document
- Implementation of the budget by the administration
- Audits of the budget by an independent auditor hired by the governing body.

The budget serves a number of different purposes for you as a manager. The first function of the budget is fiscal control over spending in your department and accountability. The purpose of control budgeting is to limit increases year to year and to insure proper justification for all expenditures. Your budgets are generally prepared and approved on a line by line basis and includes detailed descriptions of how the funds are to be spent. These form an object-expense format with each purchase enumerated and categorized into major groupings such as personnel, supplies, training, and professional services. These groupings make up your operating budget.

The budget process is an annual event with built-in limitations on the expenditure of the funds that have been set aside for each year. Your budget should be very comprehensive and should include forecasts of both possible costs and revenues generated for the next year. This forecasting process will be discussed in more detail later. The budget should be organized in such a way that the relationships of each of the different parts are readily apparent. Your chief aim in this process is to outline what resources you will need in order to accomplish the tasks assigned to you by law and help the governing body establish the policies that affect your department.

You should remember that your budget does not stand alone but must become an integral part of the unified budget of the municipality. Both the costs of operation and the revenue you generate are integrated by the administration into the municipal budget document. One exception from this truism is the capital improvement budget which is a separate ordinance and deals with long range expenses such as automobiles.

Under the New Jersey Budget Law, the official budget document is presented in the line item format. This method is input based and is incremental in nature.

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The line item model is the foundation of all the budgeting systems in the state, and fits neatly with the fiscal control requirements needed to comply with the budget cap limitations under the law. Most local governments in New Jersey do not move beyond the line item format. The municipal budget may be enhanced by other budgeting systems including performance/management budgeting and program budgeting. These methods are discussed below.

The philosophy behind these advanced budgeting methods is a management oriented decision making approach. This management budgeting also known as performance budgeting. It takes the budget process beyond control and uses it as a management tool to establish goals and objectives which focus on both quantitative and qualitative indicators of output and achievement. It translates how the services performed by government can best be accomplished for the least cost by establishing performance goals and objectives which can be quantified. This changes the outlook from one of strict control over the funds to performance evaluation. The need for service drives the budget, not the amount of funds available.

This approach allows for the manager to measure the quality and quantity of the work being produced. This enables the manager to determine the efficiency of his operation and use the budget as a planning tool. The management approach allows the manager to project what his needs will be in the future based upon the budget priorities established by the governing body.

The budget then becomes much more and outlines how funds are going to be allocated but it becomes a tool to measure success and establish priorities. One method used within performance budgeting is zero-based budgeting.

This method of budgeting incorporates both the analytic and evaluative techniques to construct a results-oriented, priority-setting budget process.

Zero based budgeting starts with a clean sheet of paper each year and makes the manager justify, based on past performance, the funding needed to perform the tasks assigned to the department. The method describes the consequences of not funding the department; what a minimum funding package would be, which presents the legally mandated level of operations, or the point where it is no longer possible to meet the state requirements. The approach establishes what a reduced level of funds would allow you to do and establishes what funding would be needed in order to increase performance levels and accomplish increased workloads.

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Standard Definitions

APPROPRIATION – An amount authorized by a legislative branch of government to be spent for a specific purpose in a given budgetary period. An appropriation made for one purpose may not be used for another. Budget line items in the municipal construction code enforcing agency such as salaries, wages, or other expenses are examples of appropriations.

BUDGET – A plan prepared by a governmental entity of its expenditures and revenues for a specific period of time, usually one year. It is a systematic plan for meeting expenses in a given year. The current fund and the UCC dedicated trust fund each have their own budget.

CAP – A limit placed on municipal appropriations pursuant to the Budget Law (NJSA: 40A: 4-45.1 et seq.). Uniform Construction Code trust fund appropriations are not subject to cap limitations. Budget caps limit the growth of public spending by capping appropriations and expenditures. This is the opposite of the tax limitation measures such as California's "Proposition 13" which limits the growth of government spending on the revenue side through tax revenue limitation.

CURRENT OR GENERAL FUND – An account for revenues and expenditures for general operations. A construction office using dedication by budget is part of a current fund. Dedicated construction code budgets are usually within the budget cap limitation.

ENCUMBRANCES – They are committed expenditures against the appropriations which have not actually been made at the time they are recorded. They may be in the form of purchase orders or contracts for goods and/or services. Encumbrances must be noted along with expenditures because in order to be certain that a department is within its appropriation, one must know not only what portion of budgeted resource has been spent but also what portion has been committed to be spent. Upon actual payment, the encumbrance is liquidated and the expenditure is recorded. An example of an encumbrance may work this way: a municipality initiates a \$250 purchase order for code books from an operating expense line item having a balance of \$2,000. The \$250 purchase order is encumbered or frozen thus leaving \$1,750 available in the operating expense budget line item. When the code books are received, the bill is paid and the encumbrance is liquidated. The significance is that, while the municipality is in possession of the full \$2,000 until the bill is paid, only \$1,750 is available to be spent because the \$250 is committed to the purchase of the books. The ultimate purpose is to prevent over-expenditures through a centralized purchasing system.

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EXPENDITURE – Under the modified accrual basis of accounting, designates the cost of goods and/or services rendered whether paid or unpaid. When appropriations are committed and/or spent as salaries or purchases of goods and services, they become expenditures.

FUND – A complete accounting entity with its own self balancing group of accounts, consisting of assets, liabilities, reserves and fund balance. Each fund has its own budgetary revenue and expense accounts. Examples of funds are current funds, trust funds, general capital funds and utility funds.

MODIFIED ACCRUAL BASIS OF ACCOUNTING – New Jersey municipalities operate on what is called the modified accrual basis of accounting. Under this system, expenditures are recorded at the time liabilities are incurred and revenues are recorded when received in cash. In brief, you consider funds spent when you commit to spend them and you do not count revenue until you have actually received the cash. This is considered the safest, most conservative form of accounting.

SURPLUS – It is the excess of revenues over expenditures which may be appropriated in the following years budget. A surplus might reduce the amount to be raised through taxes or fees to finance operations. As an example, both current and trust funds usually have surpluses.

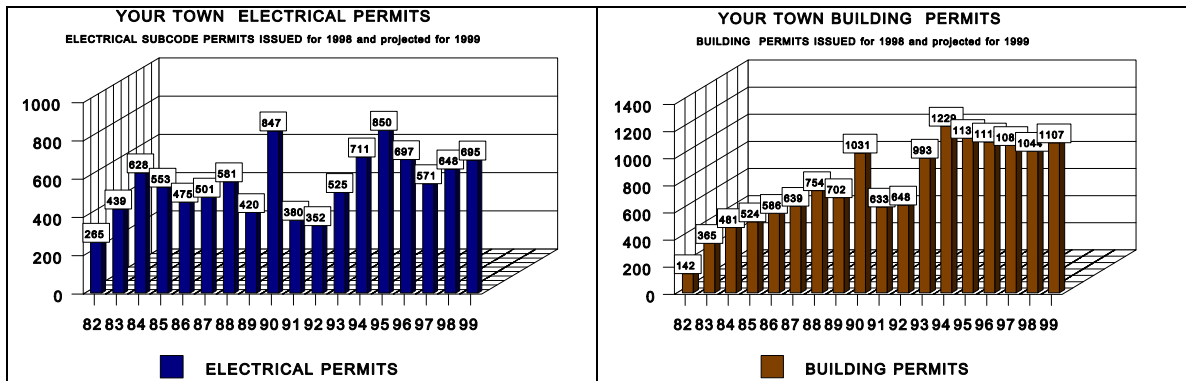
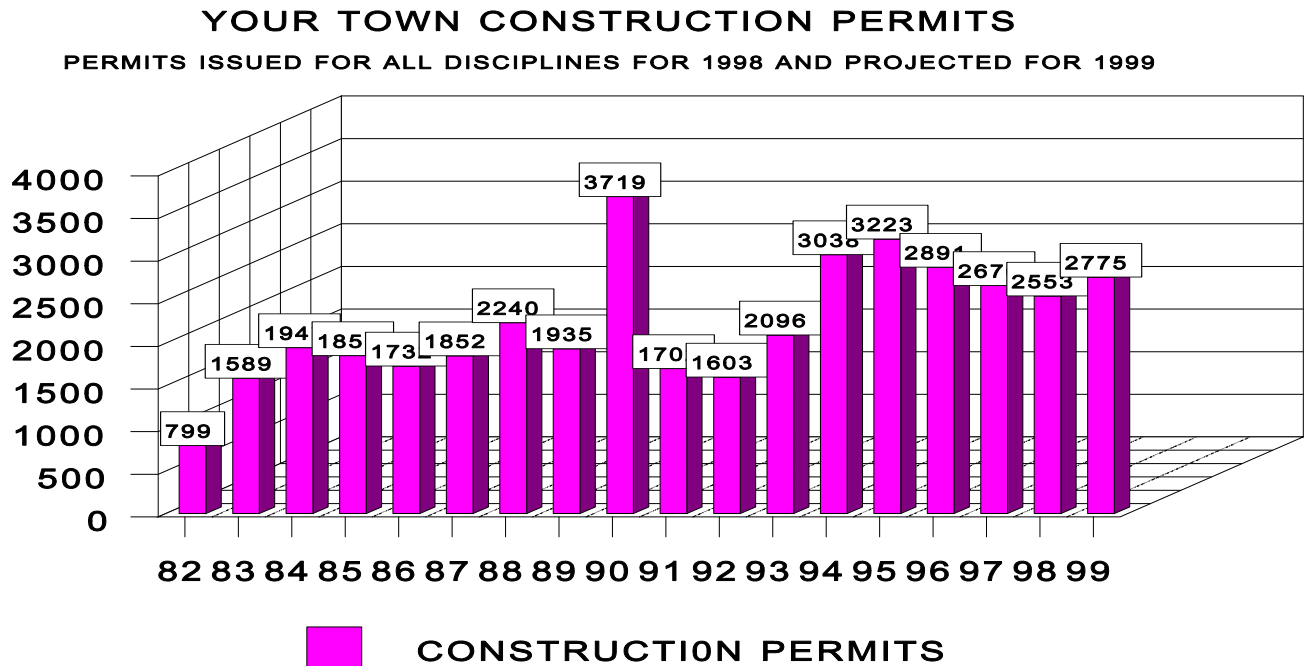
TRUST FUNDS – An account for revenues and expenditures intended solely for a specific purpose. Examples are a dog license trust fund or a Uniform Construction Code trust fund. Trust funds are outside of the budget cap limitation.

PROJECTED ACTIVITY

As the official responsible for managing the department you must first have a clear understanding of what your workload will be. Use all sources that are available to help you understand what is facing you.

One source that is readily available to you is historical. It is relatively easy to look back over the last five years and determine how many permits have been issued; how many inspections have been performed; and how much money you have collected in fees.

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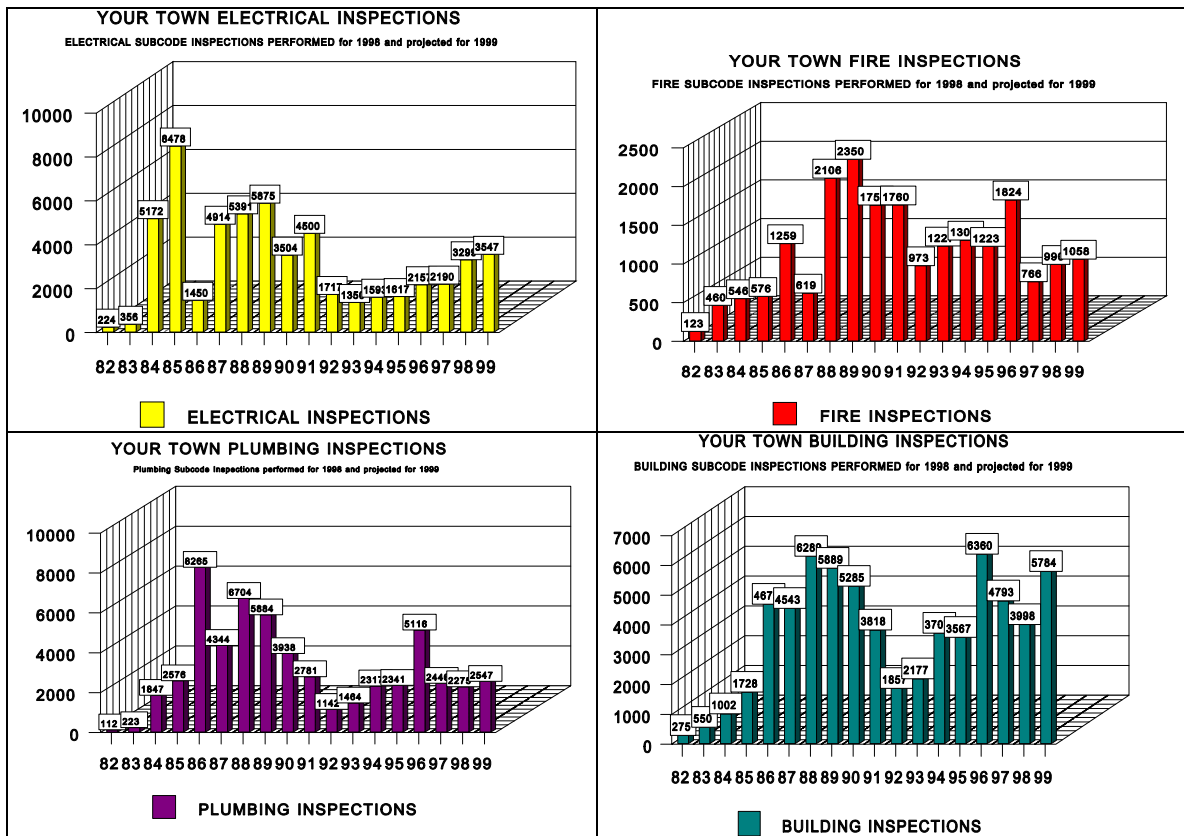
It is also easy to obtain the number of applications that are currently before your local Planning Board and the Zoning Board of Adjustment. Determining the number of permits, inspections and fees you can expect from these projects will help show you what to look forward to as far as work load in the next several years.

When you compare what has happened in the past with what is before you it is possible to determine what trends to expect and staff your department up or down accordingly.

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INSPECTION ACTIVITY

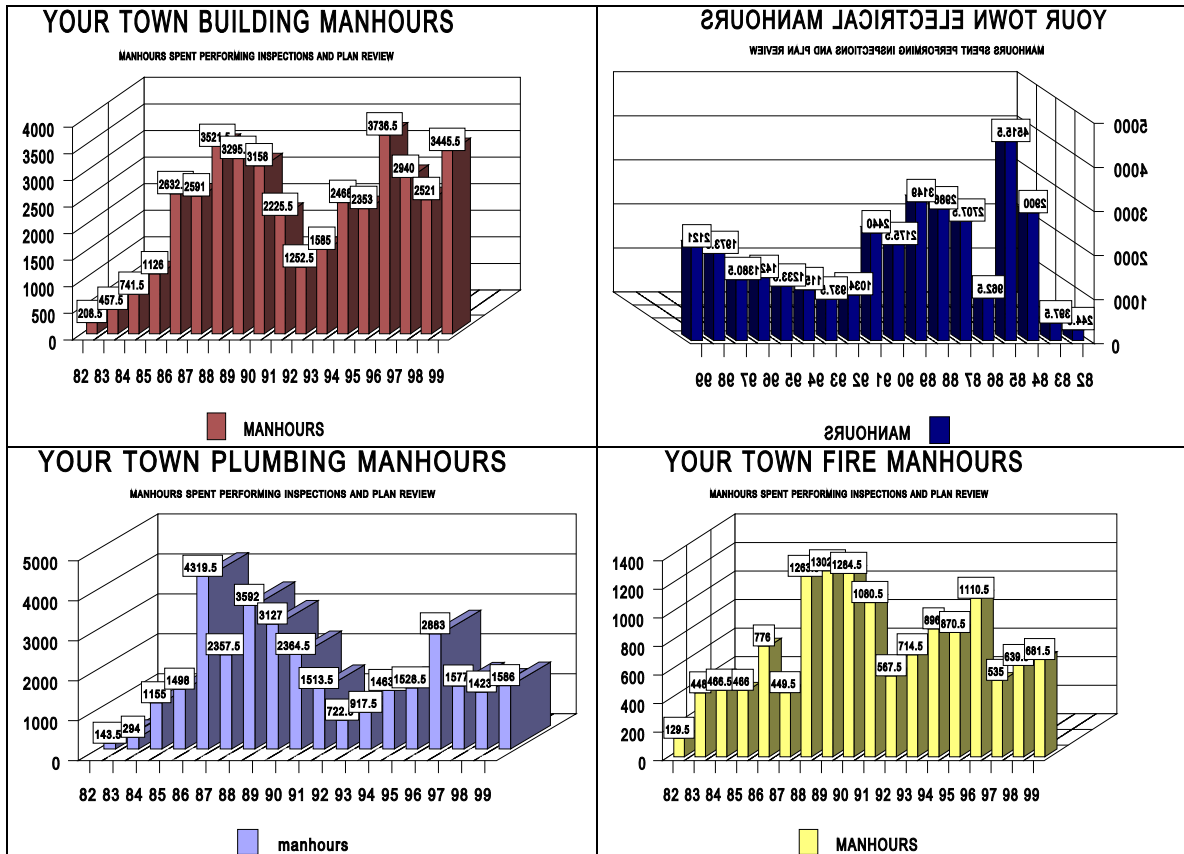
The number of inspections that were completed can also be translated into the number of hours needed in order to perform these inspections. This is very valuable when determining staffing. As licensed professionals we know that there is a limit to the number of inspections that can be completed well in one day. With the limited number of days available to make inspections, you can compute how many hours are available to perform the inspections. If, on average, a building inspection takes 20 minutes to perform and 10 minutes of travel time from one inspection to another, within five hours per day of inspection activity for each inspector, the inspector is limited to 10 inspections per day. This estimate includes two hours of paper work on office assignments within a normal seven hour day. On average, 270 days are available for work activity for each employee. If each inspector is capable of performing 10 inspections per day, you have 270 days available for inspection activity per inspector. Accordingly, if the inspector is performing more than 2,700 inspections per year, you need more inspectors to insure that quality inspections are being performed.



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STAFFING

An average of ten inspections can realistically be performed in one day by each inspector. If you are scheduling more than ten inspections per day, the inspections may not be through or you may need more staff. The type of inspection that is being performed will also impact on the amount of time needed to complete the inspections given to any one inspector.



PLAN REVIEW

Your plan review staff may or may not be the same individuals who perform the inspections in your municipality. If they are the same people, you must factor in the amount of time needed during the day for this activity. Generally speaking reviewing the plans of a new single family dwelling can take upwards to one for compliance by the building subcode official. Twenty minutes would be required per plan for each of the other subcodes. Alteration work for residential construction will take a lesser period of time per discipline and should also be factored into the number of hours available per year for enforcement activities. Of course, large commercial projects will take substantially longer to review starting from four hours per discipline upwards to 18 hours depending on the complexity of the project. You

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can determine what type of workload you have to face as determined previously and can calculate the number of work hours needed in order to accomplish this task.

You should determine how long it takes to process each permit by your clerical staff. Based on the number of permits issued, you may determine the clerical staff you need. Make sure that you include all that your staff accomplishes so that you can get an accurate feel for the workload and your staffing needs.

After you have determined your staffing needs, you need to look at how the department's budget is organized. The regulations require that the fees that are collected by the department be spent to fund the department. In a word you are required to be self-sufficient. Within this proviso the State allows two methods for establishing budgets. They are either dedication by rider or dedication by budget.

STATISTICAL APPROACH

Several statistical approaches are available to help determine the workload and the amount of staffing you will need in order to fulfill your responsibilities. Using this approach you can project what your activity will be in the future based on what has happened in the past. The more data you collect for your model the more accurate the projection will be. This approach can be used as a comparison with the other empirical approaches we have discussed previously. Most statistical calculators can perform these equations for you with just substituting your data into the basic formula.

DEDICATION BY RIDER

Dedication by Rider is a trust fund permitted for certain municipal functions including construction code enforcement. It is separate from the municipal current or general fund. The trust fund always maintains sufficient revenues to cover expenditures. It is not part of the municipal general budget, and may not operate at a deficit. Surpluses accrue from year to year, and there are definite restrictions for the use of the surplus monies by the municipality. The budget cap limitations do not apply.

DEDICATION BY BUDGET

A less restrictive method is known as Dedication by Budget. The UCC revenues and appropriations are budgeted separately within the municipal current or general fund. In this system, the enforcing agency budget accounts are subject to the general budgeting rules for spending, transferring, amending and canceling appropriations. The anticipated enforcing agency revenues may not exceed appropriations. Anticipated revenues may be lower than appropriations – the enforcing agency is often supported by the general budget revenues. The budget cap limitations do apply.

There are three types of costs associated with a department. They are direct, indirect and emergencies.

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DIRECT COSTS

Direct costs are related to the functioning of the department in the performance of enforcing the Uniform Construction Code. There are tangible costs we determined we needed above in order to do our jobs. They include the salaries and employee benefits of the licensed code enforcement officials, inspectors, and clerical staff assigned to the enforcing agency. These costs should be proportionate to the time spent by the employees in performing work for the agency. Detailed time records should be kept where employees divide their time between non construction code and construction code duties. It also includes costs associated with the use of motor vehicles when the motor vehicles are used for construction code purposes and costs such as equipment, supplies, furniture, office equipment maintenance, purchase of standardized forms, printing, and safety equipment. Any professional expenses directly related to the enforcement of regulations such as membership dues, publications, license fees, and travel to conferences, meetings and seminars are also direct costs.

Also allowed as direct costs are those related to services rendered by private on-site inspection agencies and legal services which are documented to be required in connection with construction code litigation. This particularly means appearances before the Construction Board of Appeals. Lastly, fees associated with the annual audit are considered direct costs.

INDIRECT COSTS

Indirect costs are those costs which are not readily visible in the departmental budget. They include the cost for administrative services rendered by personnel, payroll, and general service departments provided to an agency by a municipality. Central services, shared by other municipal offices, such as telephone, copying, centralized computer services, electricity, water, gas, heat, and other general building maintenance expenses are also indirect. Other insurance requirements include pensions and workmen's compensation insurance. General finance support can include bookkeeping, purchasing, and auditing. Office space rent and debt service reduction on municipal capital facilities and such other administrative support which can be properly allocated to construction code enforcement. The regulations limit these indirect costs to 12% of the overall department costs.

There is a common misconception involving an alleged conflict between the Uniform Construction Code and the Local Budget Law. Specifically, the issue of funds being collected in one budget year and being made available for code enforcement expenses in future budget years. A Dedicated by Rider account clearly reserves all funds collected for a specific purpose i.e. construction code enforcement, to be made available for future expenses and is therefore exempt from the general requirement that all accounts be closed at the end of the budget year. Although the Budget Law requires that non-rider accounts be closed, it does not

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contradict the provision of the UCC that provides for monies previously collected for code enforcement be spent exclusively for code enforcement.

For example, assume a surplus of \$100,000.00 is generated by your office in a budget year, and as required, the annual report that was jointly prepared by you and your finance officer and submitted to the Department reflects the \$100,000.00 surplus. Your finance officer informs you that your account will be closed and that money will revert back to the general fund as required by the budget law. The following year, the Department of Community Affairs conducts a monitoring of your agency and determines that you need an additional building inspector. Although your finance officer may claim that there are insufficient funds in your current account to cover that cost, the DCA's Division of Codes and Standards which is a sister agency to the DCA's Division of Local Government Services, interprets the requirements of its regulations as **not** being in conflict with the Local Budget Law and does not preclude the municipality from making those funds available since they were collected for a specific purpose.

EMERGENCY COSTS

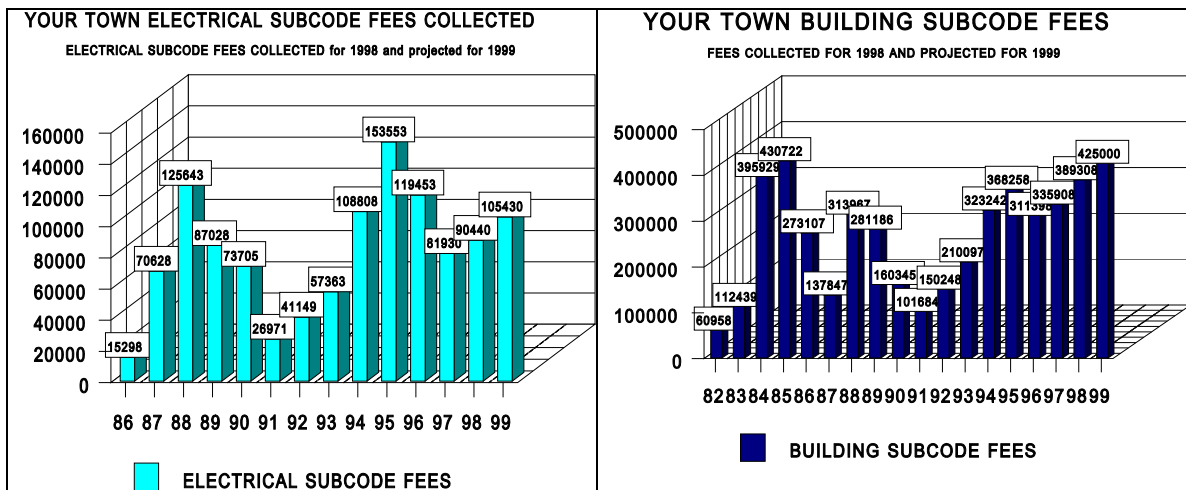
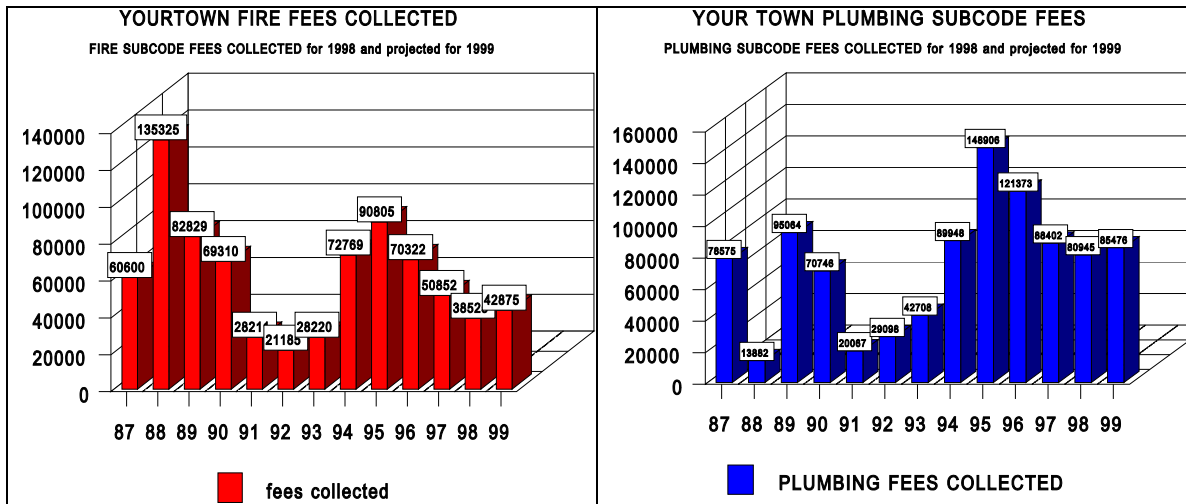
The last cost is emergency cost. This is one area you want to stay away from as it directly reflects on your budgeting ability. An emergency is by definition embarrassing. This activity will occur if you have failed to ask for sufficient funds to insure that the enforcing agency can continue to operate. Another way this problem can occur is if your community has a major fire or disaster where an emergency appropriation becomes necessary. When this occurs you must justify to your governing body, with documentation, why this money must be spent.

A better way is to place in your budget a line item dealing with emergency actions. At budget time you should explain to your council how this item can be helpful to them in the budget process.

REVENUES

The functioning of your enforcing agency is not like most municipal departments funded by taxes assessed by the municipality. Your costs are paid for by the fees you generate when you issue permits. These fees should be sufficient to insure that all of the costs described above are covered. The department should be self sufficient. The revenues should not to be used by the municipality to pay for non UCC operations.

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UCC FEES

Your fees must be outlined in a fee schedule in sufficient detail to enable anyone to determine what each permit will cost. These fees should be outlined by subcode and should show all of those items outlined in the regulations that require inspections. The fee charged must be capable of covering the cost of the administrative work and the inspections necessary in order to insure compliance with the Uniform Construction Code. The fees must be established by ordinance by the municipality and must cover plan review; construction permit issuance; certificates of occupancy issuance; certificates of continued occupancies; demolition permits; elevator permits; annual permits, and sign permits

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NON UCC FEES

The municipality must also include in this ordinance all other fees pertaining to the operations of the enforcing agency, including those for which the Department of Community Affairs does not establish standards. All minimum fees will be stipulated in the ordinance and fees are to be rounded to the nearest dollar amount.

Those fees that are not covered by the Uniform Construction Code but must also be detailed. They should be shown in the ordinance as separate from those fees that are generated by the Uniform Construction Code. These fees will vary from municipality to municipality but can include things like real estate signs; road openings; contractor registration; zoning approvals; banners; special events, and certificates of continued occupancy issued for compliance with the zoning ordinance.

THIRD PARTY UCC FEE ACTIVITY

Third party costs must also be covered by the fee schedule. The fees that are bid will require you to modify the fee schedule based upon who was the successful bidder for that year. This change in percentage must be reflected in the fees that you charge for permits covered by these outside agencies. An administrative fee of up to a maximum of 15% can be added on to the costs associated with third party operations. An example of this surcharge is charging a \$15 administrative fee for a \$100 permit

EXEMPT FEES

State law or local ordinance may provide fee exemptions for some construction projects (county, school districts, non profit, etc.). The municipality and its enforcing agency must issue permits and perform inspections for such projects without charging a fee. In these cases, the cost of enforcement must be covered by the municipality. When the municipality contracts with a private inspection agency, the agency must bill and be paid for work on the exempt projects. These costs shall not be passed on to the permit applicant. While this may seem unfair, it is the law.

TRAINING SURCHARGE FEE

From the State's point of view one of the most important fees that we collect is a state training surcharge fee. This fee is collected on all permits issued with no exceptions and is used to cover the cost of the training mandated under the Uniform Construction Code. This fee is currently established at a rate of \$0.0016 per cubic foot of area for new construction and additions and at a rate of \$.80 per \$1,000 of value of construction on alterations.

PENALTIES

Penalties can also be charged if this is the only way to ensure compliance with the regulations. The Construction Official establishes what the penalty should be. This should be covered in the municipality's policies and procedures manual so

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you can be assured of consistency. It is important for you to be able to justify the amount of the penalty and be able to show equality. The amount and type of penalty that you assess can be found at NJS 52:27D-138 of the Uniform Construction Code Act and NJAC 5:23-2.31 of the regulations. You cannot exceed these prescribed amounts.

ANNUAL REPORTS

As the Construction Official you are responsible for submitting monthly reports, an annual report to the municipality and an activity report from your jurisdiction to the Department. The formats to follow for these reports are to be found in NJAC 5:23-4.17(b) of the regulations. These reports help both your municipality and the State to understand the type and amount of activity taking place in your municipality. This planning tool enables your governing body to be in a better position to provide the proper amount of service to the residents. The number of certificates that you issue is also a planning tool that is very important to your governing body and your school board. This comparison shows the amount of growth that has occurred in your municipality and what kind of impact this growth will have on the services offered by the government.

**RECORDS, OFFICE PROCEDURES,
and POLICIES**

Construction Official Commentary

RECORDS, OFFICE PROCEDURES and POLICIES

MUNICIPAL CENTRAL FILING SYSTEM

Block and Lot File

In accordance with NJAC 5:23-4.5(a), the municipal enforcing agency is required to maintain a central file system for the municipality. This central file system is to be set up in accordance with each block and lot that has been created within the municipality. The process of creating a file for each individual block and lot allows the enforcing agency to properly track and maintain information concerning permits requested and issued for each property.

The *Uniform Construction Code Municipal Procedures Manual*, issued by the Department of Community Affairs, details how all records and files shall be maintained. Each file is required to contain all information relevant to the property. This includes applications, inspection reports, violation notices, and correspondence and related information that are relevant to each application for a construction permit or certificate of occupancy. If plans and specifications are too large to be included within the file, their remote storage location shall be identified.

The central block and lot file may be created for the exclusive use of the construction department. More commonly it is created with the assistance and mutual use of the planning and zoning department and/or the tax assessor.

Active Permit Filing

It is advantageous to maintain all active files within an active filing system until the completion and final disposition of the current activity covered by that particular permit. Utilizing this method would find the enforcing agency maintaining all active files separately by permit number or block and lot designation. Upon completion of the permitted activity and issuance of the appropriate certificate, the file would be returned to the central block and lot file.

Follow up of all active construction permits is key to the successful operation of an enforcing agency. Utilization of a "tickler" file, either by a manual or computer method, will allow the agency to maintain inspection supervision of an activity or promptly close the permit upon completion.

Public Review of Permit and Block/Lot Files

All records of the municipal enforcing agency are open to department review and public inspection during the normal business hours of the agency. This includes all active construction permit files, plans and specifications and the entire block and lot file. The enforcing agency should develop a policy on how these requests will be handled to avoid and minimize any disruptions to the office operation. All costs for copies shall be in accordance with current state mandated regulations.

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REQUIRED STANDARDIZED FORMS

Availability

The intent of the Uniform Construction Code is to provide statewide uniformity in the process of obtaining a construction permit. The procedure is to be the same no matter what municipality you reside or work within. One way this intent is met is through the use of standardized forms that all municipalities are required and/or have an option to use (NJAC 5:23-4.5(b) through (f)).

The municipal enforcing agency must provide all forms that an applicant is required to use. The forms are to be provided at no cost and be available during normal business hours at each office. The forms are the same throughout the state, and a municipality may not refuse to accept another municipality's form. No forms other than those established by the Department shall be required of the public in association with the administration and enforcement of the Uniform Construction Code.

Required forms are:

F100	Construction Permit Application
F101	Consent to Undertake Proposed Work
F110	Building Subcode – Technical Section
F120	Electrical Subcode – Technical Section
F130	Plumbing Subcode – Technical Section
F140	Fire Protection Subcode – Technical Section
F145	Mechanical Inspector – Technical Section
F150	Elevator Subcode – Technical Section
F155	Elevator Subcode Multiple Devices
F160	Application For Variation
F170	Construction Permit/ Required Inspections
F180	Construction Permit Notice
F190	Permit Update
F211	Notice Of Violation And Order To Terminate
F212	Notice And Order Of Penalty
F213	Notice Of Violation And Order To Terminate (Post CO--Residential)
F214	Notice And Order Of Penalty (Post CO--Residential)
F221	Inspection Sticker Approval/ Building
F222A	Inspection Sticker Approval/ Electric
F223	Inspection Sticker Approval/ Plumbing
F224A	Inspection Sticker Approval/ Fire Protection
F225	Inspection Sticker Approval/ Elevator
F230B	Inspection Sticker Not Approved
F241	Notice Of Unsafe Structure

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F242	Notice Of Imminent Hazard
F245	Order to Vacate
F250	Stop Construction Order
F255	Stop Construction Notice
F260	Certificate
F270	Application For Certificate
F310	Elevator Inspection
F320A	Elevator Notice
F325	Notice: Elevator Out Of Service
F326	Elevator – Accident/Incident Report
F350	Cut-In-Card
F360	Denial Of Permit
F370	Chimney Certification For Replacement Of Fuel-Fired Equipment

Optional use forms

Pursuant to *NJAC 5:23-4.5(b)4* and *NJAC 5:23-4.5(f)*, optional forms for use by a municipal enforcing agency are provided. If an enforcing agency elects not to use the optional forms, an equivalent form, or method that accomplishes the same intent, must be used. The choices make it possible for a municipal enforcing agency to customize its office procedures to meet particular operational goals. The optional forms are:

F200	Inspection Notice
F280B	T.C.O. Control Card
F290	Ongoing Inspection Control Card
F300	Ongoing Inspections Schedule
F375	Tickler/X-Ref Card
R800A	Daily/Weekly Inspectors Report

STANDARDIZED LOGS

An enforcing agency is required to have an operational process that provides proper recording and follow up of functions vital to the operation of the agency. UCC-required functions include issuance of permits and fees collected; inspections – requested, dates conducted, and results; all certificates issued; and, all necessary ongoing inspections for special equipment. Log forms (*NJAC 5:23-4.5(c)1*) that meet the requirements of the UCC is the use of the following logs:

L700	Permit Fee Log	L710	Inspection Log
L720	Certificate Log	L730	Ongoing Inspection Log

Pursuant to *NJAC 5:23-4.5(c)2*, a municipal enforcing agency is required to maintain logs of the required information of the standardized log forms given above, L700, L710, L720, L730. The required information can be collected either on the

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standardized log forms or on log sheets or a ledger book of the municipality's own choice or design as long as all the required information is maintained.

ENFORCING AGENCY REPORTS

Monthly Reports

Prompt and accurate reporting is important to the successful operation of the municipal enforcing agency. In accordance with *NJAC 5:23-4.5(d)1*, the municipal enforcing agency must complete two standardized monthly report forms and must transmit them to the Department by the tenth business day following the end of each calendar month. The Department requires that all agencies that issue more than 200 permits per year must transmit their monthly reports electronically. The forms are: R811, Municipal Monthly Activity Report (Certificates), and R812, Municipal Monthly Activity Report (Permits).

A method that enables a municipal enforcing agency to transmit electronic monthly reports to the Department is through the use of the Uniform Construction Code Activity Reporting System (UCCARS). This software, available from the Department at no cost to the enforcing agency, provides the required format for monthly filing. In addition many of the other forms and functions required by the Department are contained within this software package. There is no Department requirement that the UCCARS system be used. However, any alternative permit-reporting software must be compatible with UCCARS specifications.

Quarterly Reports

Each municipal enforcing agency is required by the Uniform Construction Code Act to collect a surcharge fee. This fee provides funding for required training, certification, and technical support programs. The fees are based on the volume and/or the value of new construction. In accordance with *NJAC 5:23-4.19(c)1*, the fees are to be remitted on a quarterly basis. The use of form R840, State Fee Report, pursuant to *NJAC 5:23-4.5(d)*, is required.

MUNICIPAL REPORTING

In addition to the required reports that must be filed with the Department, each enforcing agency should file monthly construction permit activity reports with the administrative head of their municipality. Depending on the particular form of government, this person may be the Township Manager, Business Administrator or Mayor.

Additional municipal departments such as Tax Assessor, Tax Collector, Planning Administrator, Public Works, and the Water and Sewer Division may find the information contained within your activity report useful in their own operation. These departments should also receive your report if applicable.

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Reports should generally include the following information:

(a) Construction permits

1. Number issued
2. Breakdown of number issued by use group
3. Valuation of issued permits
4. Permits issued for new structures on well or public water
5. Permits issued for new structures on septic or public sewer

(b) Inspections conducted by personnel within the office

1. Construction inspections
2. Zoning
3. Maintenance or housing code complaints
4. Resident request
5. Complaints
6. Inspections for resale

(c) Revenue

1. Amount of fees realized from construction permits
2. Amount of fees realized from other types of required inspections
3. Amount of fees not realized because applicant was fee either by state or municipal regulations.

CONSTRUCTION OFFICE PROCEDURES

Applications

The construction office procedure for the issuance of a construction permit must start with the receipt of a permit application. All applications for a construction permit shall be submitted in the form and format as outlined within NJAC 5:23-2.15. This section of the regulations clearly details the construction type requirements that must be satisfied by the application. However, it also requests a statement that all applicable *prior approvals* have been obtained that will permit the requested construction. What is a prior approval?

Prior Approvals

A prior approval is an affirmative answer or an acknowledgment to proceed, which is granted by an authority other than the municipal enforcing agency. This approval may be issued by various levels of government or none at all depending on the location or type of the proposed construction activity.

Levels of prior approvals may be separated into the levels of the following examples:

State-level approvals

- (a) Pinelands Commission
- (b) Coastal Area Facilities Review Act
- (c) Department of Health
- (d) Division of Youth and Family Services

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- (e) Department of Education
- (f) Department of Environmental Protection
- (g) Department of Transportation
- County-level approvals
 - (a) County highway
 - (b) County planning board
 - (c) County health department
 - (d) County or regional water or sewer authority
 - (e) Soil conservation district
- Municipal-level approvals
 - (a) Planning board
 - (b) Zoning board of adjustment
 - (c) Road opening
 - (d) Driveway access permit
 - (e) Board of health
 - (f) Water/sewer department or authority
 - (g) Municipal engineer

Requirements of a Complete Application

Throughout the regulations it is stated that the enforcing agency will accept complete applications for permits. NJAC 5:23-2.15(a) through (e) outlines all requirements for the information and documents that are required for a construction permit application. It is most important that the Construction Official reviews this information carefully and rejects those applications, which are deemed incomplete. The following items should be checked upon your initial review of an application.

- The permit application process is streamlined with the utilization of the required standardized forms. The following completed forms are required to be submitted.:
 1. Construction Permit Application (F100)
 2. Building Subcode Technical Section (F110)
 3. Electrical Subcode Technical Section (F120)
 4. Plumbing Subcode Technical Section (F130)
 5. Fire Protection Subcode Technical Section (F140)
 6. Mechanical Inspector Technical Section (F145)
 7. Elevator Subcode Technical Section (F150)
 8. Elevator Subcode Multiple Devices (F155)(Forms F110 through F155 only if applicable)

The required technical section applications shall be completely filled out and signed. In the case of plumbing and electrical sections, they must also have the

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New Jersey license seal impressed on the form unless the work is performed by a homeowner of a single-family dwelling.

- Submit documentation that any applicable prior approval has been obtained.
- New residential construction must be done by contractors registered with the State of New Jersey under the New Home Warranty and Builder's Registration Act. The builder must present a current validated registration card and record the number on the application (NJAC 5:23-2.15(b)1.i). This section also provides for the exception of owner built new residential construction.
- A minimum of two sets of construction documents shall accompany each application. The plans shall be drawn to scale and have sufficient clarity and dimensions to show the nature and character of the work to be performed. These plans and related documents shall be signed and sealed by a registered New Jersey architect or a New Jersey licensed engineer. The Construction Official shall waive the requirement for sealed plans in the case of a single family homeowner who has prepared his own construction plans of a structure used or intended to be used exclusively as his private residence, and to be constructed by himself.
- In the case of a Class III structure, the licensed plumber may prepare the plumbing plans and the licensed electrician may prepare the electrical plans. These plans must also be signed and sealed by the plumber and electrician, respectively. The plans for the mechanical system in a Class III building may be drawn by the mechanical contractor. Since the State does not presently license mechanical contractors, an affidavit from the contractor who prepared the plan is acceptable.
- Plans that are not permitted by regulation to be reviewed by the local agency should be checked for the stamped release from the Department of Community Affairs.
- The estimated costs of construction, cubic volume, and square footage of new construction must be on the plans or application in the appropriate location. These items are necessary for the pricing of the permit fee, and to provide the State with information on construction growth or decline.
- A complete listing of all names and addresses of all proposed contractors shall be provided no later than the commencement of work.

Partial Filing

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A construction project may be filed in part (i.e., footing, foundation, structural, electrical, fire protection, etc.) if the applicant desires. Each partial submission is required to include sufficient detail to assure that the part that is being proposed complies with the regulations. Release of a partial permit shall be issued without prejudice as to whether a release will be obtained for the entire construction project. It should be remembered that a request for partial filing does not absolve the applicant from obtaining all required prior approvals prior to release of any part of the construction permit.

Prototype Filing

Construction designs that are repeatedly used at different locations within a municipality may be designated as “prototype” plans. Upon initial application, one additional complete set of plans, with as many variations as can be shown on the plans, is to be submitted with a request for prototype processing. Subsequent permit submissions shall consist of at least a plot plan, signed and sealed by an architect or professional engineer, including utilities, exterior elevations of the proposed building and the prototype file identification number.

Construction Permit Procedures

Once a completed permit application has been received and accepted, the twenty-business day review period commences. The Construction Official and/or appropriate subcode officials shall review all applications and updates and approve or deny within this twenty-day time frame. Unless the applicant has extended the review period, applications which have not been acted upon by the enforcing agency within the twenty day period, shall be deemed a denial of the application for purposes of an appeal to the Construction Board of Appeals.

The Construction Official shall issue a permit for prototype plans for which a “prototype” permit has been previously issued in the same municipality, within three business days from application.

The enforcing agency is required to provide the applicant with all reasons for a permit denial in writing. Permit denials may be appealed to the Construction Board of Appeals.

Upon completion of all applicable plan review, the enforcing agency will process a construction permit. This processing shall include the completion of standardized form F170, Construction Permit and standardized form F180, Construction Permit Placard.

Upon receipt of payment for the permit, the applicant will receive the permit placard, his copy of standardized forms F170, F110, F120, F130, F140, F145, F150 and F155. The Construction Official or his authorized subordinate shall sign every

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permit. One set of the approved construction documents shall be stamped by the enforcing agency and returned to the applicant.

Inspections

Inspections conducted by the enforcing agency are necessary to insure that construction is taking place in accordance with the approved plans and in compliance with the regulations. These inspections may be broken down into several areas.

- Preliminary inspection
Before issuing a permit, the Construction Official and any appropriate subcode officials shall, where necessary, examine or cause to be examined all buildings, structures and sites for which an application has been filed for a construction permit.
- Progress of work inspection
The regulations permit the enforcing agency to conduct as many periodic inspections as are necessary to insure that work installed conforms to the approved plans and the requirements of the regulations.

Inspections of one- and two-family dwellings are required pursuant to *NJAC 5:23-2.18(b) 1*. The inspections bulleted below must be conducted and the construction approved before construction can continue. See the code for details.

- The bottoms of footing trenches before footings are placed.
- Foundations and all walls up to grade level prior to backfill or covering.
- All utilities, including septic.
- Building subcode – All structural framing, connections, wall and roof sheathing, and insulation prior to covering with finish or infill material. Use of a DCA-approved checklist is required.
- Plumbing subcode – rough piping.
- Electrical subcode – rough wiring, panels and service installation.

Required inspections for all other construction (other than that for one- and two-family dwellings) includes the inspections required of one and two family dwellings noted above and the additional inspections bulleted below. The building inspector conducts compliance reviews of buildings required to be barrier-free during the framing inspection.

- Fire-suppression systems.
- Heat-producing devices.

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- Items outlined within a relevant subcode.
- Special items the enforcing agency required and clearly identified in the construction permit.

Requests for required inspections are the responsibility of the applicant or the responsible person in charge of work. Notification shall be made to the municipal enforcing agency by telephone, in person, in writing or by fax. All notifications shall be given at least 24 hours prior to the time the inspection is desired. Upon receipt of the inspection request, the enforcing agency shall perform the inspection within three (3) business days of the time for which it was requested.

- **Final Inspection**

When the building, structure or equipment installation is completed, it is necessary for the enforcing agency to conduct a final inspection. The final inspection verifies that the construction has been completed in accordance with the approved plans and the regulations. The final inspection also verifies compliance with the requirements of the Barrier Free Subcode.

- **Record of Inspections**

It is the responsibility of the enforcing agency that a written record is provided of all inspections noting any discrepancies and violations. Appropriate inspections are to be documented within the field by use of inspection stickers (standardized forms F221, F222A, F223, F224A, F225 and F230B). Written record of all inspections is maintained within the office on the appropriate subcode technical applications or supplemental form.

- **Courtesy Inspections**

Many times the enforcing agency will be requested by a resident, tenant or property owner to investigate or inspect a property, structure or equipment installation without an initial permit application being filed. As a agency of municipal government it is your responsibility to honor this request without charge even though a construction permit may never be generated. Service and safety should be your primary goal.

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CERTIFICATES

Certificates Of Occupancy

The purpose of a certificate of occupancy is to certify that the work completed under the terms of the construction permit complies with the Uniform Construction Code, conditions of the permit and all other applicable laws and ordinances. It is the responsibility of the Construction Official to review all submitted documentation. Certificates of Occupancy are conditioned upon the requirements found within NJAC 5.23-2.24. Occupancy certificates are issued for new buildings/structures, reconstructed buildings, additions and change of use.

All appropriate subcode officials shall certify that all construction is in compliance. The subcode official's sign off of their subcode technical section shall signify approval.

The Construction Official has the responsibility to verify completion of all conditions of any prior approval(s). The applicant must present proof of compliance.

The required forms for certificate application and for the certificate are mandated by NJAC 5:23-4.5(b)2. Completed applications received by the enforcing agency are to be issued within ten business days.

Temporary Certificate of Occupancy

The construction official shall issue, and may renew, a temporary certificate of occupancy prior to completion of construction if certain conditions are met: If the work covered by a construction permit has been substantially completed and the area or building is not a threat to health and safety, the permit holder may request the temporary certificate. The request must be in writing. The temporary certificate must be valid for a reasonable time period – at least 60 days – to allow the construction to be finished. When the construction official issues the certificate, the municipal tax assessor must be notified. The construction official may deny the request for a temporary certificate if any of the following circumstances exist: (1) Fees or fines are outstanding. (2) Required warranties, licenses, or registrations are not in place. (3) Conditions of prior approvals involving health and safety are unmet.

Certificate Of Approval

A certificate of approval is issued for all work that requires a construction permit but not a certificate of occupancy. This would include building repairs, renovations or alterations. Certificate of approvals do not require the submission of an application. These must be produced for each application, filed or mailed to the applicant.

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Certificate Of Continued Occupancy

A certificate of continued occupancy may be issued upon request of an owner of an existing building or structure by the Construction Official, with the approval of the appropriate subcode officials. A certificate of continued occupancy only certifies to the fact that a general inspection of the visible parts of the building has been made, no violations of the requirements of NJAC 5:23-2.14 have occurred and no unsafe conditions exist.

Certificate Of Compliance

Certificates of compliance shall be issued by the Construction Official, upon approval of the appropriate subcode official or agency concerning the following equipment:

- High pressure boilers
- Refrigeration systems
- Pressure vessels
- Cross connections and backflow preventers
- Public swimming pools
- Elevators

Lead Abatement Clearance Certificate

Certificates of lead abatement clearance are to be issued by the Construction Official at the completion of a lead hazard abatement job.

Certification shall be received by the enforcing agency from the contractor of the work in accordance with NJAC 5:17.

OFFICE POLICIES

The function of the Construction Official requires that person to be the chief administrator of the municipal enforcing agency. The Construction Official must not only be technically competent, but also possess the managerial skills necessary to operate the agency efficiently. The official must be capable of coordinating the work of the office staff, subcode officials and inspectors.

The best solution would be to have an office with full time personnel, including subcode officials, inspectors and support staff. However, this often is not the case. The Construction Official has to carefully review the activity of the department to verify that an adequate number of staff are available to receive, review and process permit applications.

If the office is not full time, the Construction Official must designate the working hours of all personnel. Consideration should be given to having subcode officials and inspectors work the same schedule. Interaction of code officials allows plan

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review problems to be discussed and provides the opportunity for all officials to be at the same information level.

Plan review and inspections do not stop during periods of vacation or time off. The Construction Official has to determine a policy of granting vacation time for office personnel if one does not exist within the municipality. Funding should be provided within the department's budget to provide for substitute subcode officials and inspectors.

ENFORCEMENT and LEGAL ASPECTS

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ENFORCEMENT AND LEGAL ASPECTS

INSPECTION AND RIGHT OF ENTRY

An individual's right to privacy must always be weighed against the official's right of entry. Everyone is afforded protection against unlawful searches by the Fourth Amendment that states in part:

" The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the persons and things to be seized. "

Construction permit applications contain language in the form of an affidavit that is signed by an applicant granting authority to inspect the premises in order to enforce the regulations. Either the owner or an agent for the owner gives this authorization.

This does not mean however, that an inspector has the right to violate a person's right to privacy. To protect that right of privacy, the owner or occupant must grant permission to an official before an inspection of the interior of a property can be inspected. Permission is not required for inspections that can be performed from the public right-of way.

An individual, having consented to inspections by possessing a permit, may still refuse an inspector entry for any number of reasons. By doing so, they may subject themselves to a penalty of not more than \$250.00 in accordance with N.J.A.C. 5:23-2.31 (b) 2

There are also occasions where a code official may need to inspect even though there is no construction permit on a property. For example, a building may have suffered some physical damage whereby a declaration of unsafe structure may be necessary.

In any case, if entry is requested by an official and subsequently denied, the Construction Official has the administrative authority to seek a court order to conduct an inspection. This court order (inspection warrant) however, will only be issued upon *probable cause*. In this instance, probable cause will be established by one of two means, the code official must view the violation firsthand (the violation must be " in plain view") or testimony from another person who can substantiate having seen the violation must be provided.

In most jurisdictions, in order to obtain an inspection warrant, the code official must satisfy the following conditions:

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- the warrant must be issued by a neutral magistrate
- probable cause must be shown (i.e., reasonable grounds to believe that the law is being violated and that a discrete, prudent person would be led to believe that there is a commission of the offense charged)
- the warrant must indicate what is to be searched and/or seized.

Obviously, whenever the need for a warrant is present, an enforcing agency should consult legal counsel.

Camara v. Municipal Court of San Francisco. 1967

An inspector had entered an apartment building to make a "routine annual inspection" and was informed that the lessee of the ground floor was using a portion of it as a residence. The inspector determined that the occupancy did not allow residential use of that floor and demanded that the lessee consent to an inspection. Mr. Camara, the lessee, refused, declaring it was in violation of the Fourth Amendment to the U. S. Constitution.

A few days later, two inspectors visited the property and asked to inspect the ground floor, citing a provision of the city code that authorized city employees with the right to enter any building to perform their duties under the municipal code. Again, entry was refused. Shortly thereafter, Camara was charged with refusing to permit a lawful inspection and was arrested.

Were the inspectors acting within their authority when they demanded to make an inspection of the premises? Was Camara within his legal rights to deny entry? How could the inspectors have legally entered and inspected the premises without an inspection warrant?

The case went to the United States Supreme Court, which held that:

A search warrant is required to make routine annual inspections of residential structures unless consent is given by the occupant.

An occupant's right of privacy shall be observed and probable cause established in order to seek an inspection warrant from the local magistrate. In order to obtain the warrant, the jurisdiction must establish that violations of a code exist which create a threat to the general welfare of the public.

Michigan v. Tyler, 1978

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Fire and police officials conducted a number of searches during and after the time that a fire was fought in a furniture showroom. All of the inspections were made without warrant. The last inspection took place nearly a month after the fire had been extinguished. The lessee of the property, Mr. Tyler, was arrested and convicted of arson.

Does an emergency situation qualify as an exception to the general rule requiring warrants? At what point does an emergency situation cease to be an emergency? Can evidence be gathered if the violations are in plain view?

The conviction was reversed by the highest court of the State because of lack of a search warrant. The case was then appealed to the U.S. Supreme Court. The court's analysis contained three parts coinciding with the three phases of the investigation: during the fire; immediately after the fire; and a time remote from the day of the fire. No trouble was presented by the first part – a warrant is not necessary in an emergency.

A burning building presents an emergency of sufficient proportions to render warrantless entry "reasonable". Indeed, it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze. And once in a building for this purpose, fire fighters may seize evidence of arson that is in plain view.

The U.S. Supreme Court upheld the state supreme court ruling that the evidence obtained to convict the building owner was indeed obtained unlawfully; that is, the evidence was obtained after the property was returned to the owner, not during the fire itself. This case identified for the first time the relationships between consent, emergency circumstances, and the "in plain view" doctrine and inspection warrant criteria.

N.J.A.C. 5:23-2.29(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.

N.J.A.C. 5:23-2.29(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

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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.

N.J.A.C.5:23-2.29(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. Accordingly, all Construction Code personnel should be provided with photo identification cards from their municipalities.

Every agency seems to be understaffed, but the construction code office has a legal obligation to make inspections, not only on new construction and alterations, but whenever they have reasonable cause to believe that a bona fide immediate danger to life, limb or property exists, regardless of whether or not it was constructed under the UCC. Under normal circumstances, the local enforcing agency shall not re-enter a building once a certificate of occupancy is issued, but the regulations are quite clear in that this does not hold true for cases of emergencies, unsafe buildings, or belief that 'unpermitted' construction is being performed.

N.J.A.C. 5:23-2.29(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.

NOTICES AND ORDERS

Whenever we discuss the issuance of notices and orders, it is important to understand the foundation upon which this authority rests. Enforcement, through the use these notices and orders, should reflect not the wishes of the official but the intent of the regulations. Therefore, it is imperative that the Construction Official has thorough knowledge of the purpose and intent of the Uniform Construction Code.

NJSA 52:27D-122 Legislative findings

It is hereby found and declared:

That a multiplicity of construction codes currently exists in this State and some of these codes contain needless restrictions which limit the use of certain materials, techniques or products without any benefit to the public. Moreover, the variation of

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construction standards caused by the multiplicity of codes slows the process of construction and increases the costs of construction.

N.J.A.C.5:23-2.1(d) the regulations shall be construed to secure its expressed intent which is to insure public safety, health and welfare insofar as they are affected by building construction through structural strength, adequate egress facilities, sanitary equipment, light and ventilation, and fire safety; and, in general, to secure safety to life and property from all hazards incident to the design, erection, repair, removal, demolition or use and occupancy of buildings, structures or premises.

The Uniform Construction Code has successfully been applied to the construction of billions of dollars worth of real estate over a time span of more than twenty years. Believe it or not, this has been accomplished with little or no change to its fundamental requirements. Through a common sense application by code officials, these regulations continue to fulfill the purpose intended by the legislature. A key element of this success is that the foundation of the Uniform Construction Code lies in the idea that all requirements will be based upon nationally recognized codes, standards and practices that are developed through a consensus process.

Of course, given the complexities involved with construction materials, methods and technology, there will be occasions when officials will be asked to render decisions that may not be addressed by the adopted subcodes. It is important to remember that the regulations, under N.J.A.C. 5-23-4.4(a)2, provide that each subcode official shall have exclusive decision-making authority with respect to the technical provisions of the subcode. To that end, the regulations have provided for the subcode official to exercise discretion when necessary.

N.J.A.C.5:23-2.2(c) "Any requirement essential for structural, fire or sanitary safety of a building or structure, or essential for the safety of the occupants thereof and which is not specifically covered by the regulations, shall be determined by the Construction Official and appropriate subcode official."

In an article written by Robert Hilzer of the Bureau of Regulatory Affairs in the Construction Code Communicator vol.8 number 4, pg.3, he states,

Instances have occurred where this regulation has been misapplied by code officials in an attempt to obtain what they wanted rather than what was intended by the regulations. If a Construction Official, subcode official or licensed inspector has an objection to a particular procedure or installation, he/she must be able to reference a particular model code section to justify the objection. Otherwise, what was intended to be a uniform construction code becomes a code personalized to each official's particular concerns with no real opportunity for consensus on what is and what is not a

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violation of the code. There is another more serious concern regarding code enforcement. Occasionally an official will require things that are clearly in excess of what the code says. Even if it is a "better" or "safer" way, unless there is a requirement in the code, you may not insist that something be done. Let's look at it logically. Forgetting code enforcement for a moment, if for personal gain you demanded that someone do something or suffer the consequences, i.e.; "give me your milk money, and I'll make sure not to punch you in the nose," that would be extortion. In the grown up world, that's a criminal offense.

in the world of public service, if as a government representative you demand something from a person that is not required by the code (it is assumed it is not for personal gain), it may not be extortion or a criminal act, but it may very well be a violation of a person's civil rights. A person would have the right to an appeal.

In the July 1997 edition of *CODES AND STANDARDS* vol.17, num.7 published by Kelly P. Reynolds & Associates, Chicago, IL, Mr. Reynolds states:

"If a code official, or any government agent, requires someone to do something that is more than the law requires, that can be interpreted as a violation of the *U.S. Civil Rights Act of 1960*. The Act (42 U.S.C. 1974) reinforces the Fourth Amendment of the *United States Constitution* (Bill of Rights) that protects from unlawful taking of private property. The courts have ruled that withholding permission to occupy property that complies with the law (code) is a civil rights violation. Triple damages may be awarded."

VIOLATION

N.J.A.C.5:23-2.30(a) Whenever the Construction Official or the appropriate subcode official shall determine that there exists a violation of the provisions of the regulations or of a detailed statement or plan approved thereunder, or where there exists a violation of a permit or certificate issued under the regulations, the Construction 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.

N.J.A.C. 5:23-2.30(b) The notice and orders shall contain at least the following information: 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

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explanation of the method of computation; and shall be signed by the appropriate subcode official and the Construction Official.

N.J.A.C.5:23-2.30(b)2 unless an immediate hazard to health and safety is posed, the Construction Official shall permit such time period for correction as is reasonable within the context of the situation.

The UCC standard form must be used for Notices of Violation and Orders to Terminate, hand delivered or sent via certified (not registered) mail. If returned, either hand deliver or photocopy front and back of unopened returned envelope, place intact in another envelope, and send via ordinary mail to the last known address of the owner or responsible party.

A full UCC citation must be included on all notices.

A reasonable period of time can vary from 24 hours (or even less) to 30 days (or even more). This must be tied into the severity of the violation and the capability of the person cited to physically abate the violation or cause it to be abated.

Remember, you must diligently follow up on the issuance of a Notice of Violation. Not to do so would only weaken your argument on the validity of the violation should you have to defend your action at an appeal hearing.

SERVICE OF NOTICE

N.J.A.C.5:23-2.33 except as specifically provided for by the act with respect to stop construction orders, service of notices and orders pursuant to this section shall be upon the owner or the person specified as agent for receipt of same in the application for a permit or the person responsible for the work or in the case of unsafe structures upon any agent or person in control of the building. Service may be made by personal delivery or by leaving a copy at the dwelling house or usual place of abode of such person, with a competent member of his household of the age of 14 years or older residing therein or by any other method or upon any other person approved pursuant to rules 4:4-4 and 4:4-5 of the New Jersey Supreme Court, or which is otherwise consistent with due process.

EXTENSIONS

N.J.A.C.5:23-2.30(c) 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

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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.

The Construction Official is not obligated to grant any extension simply because a request is made. If work is ordered to correct a hazardous situation, or if an order is issued to cease an illegal operation or occupancy, be convinced that diligent effort has been put forth before granting an extension.

A good practice is to stay away from any 'open-ended' extensions. Don't allow an owner or contractor to simply call you when something is in compliance. If the extension request exceeds three business days, or if multiple requests of less than three days are sought, the request must be in writing. Another good practice is to require the applicant to stipulate in the request exactly when the matter will be abated. This way he is on the spot if the actual requested time elapses and the enforcing agency decides to take action.

Remember, an extension is an option conferred upon the Construction Official. If the recipient of the Notice disagrees entirely with the time allotted for abatement, the Construction Board of Appeals is his avenue of recourse under the regulations.

COMPLIANCE

N.J.A.C.5:23-2.31(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.

Monetary penalties are generally the first level of enforcement to secure compliance, but they are not the only means, nor always an appropriate one. Common sense dictates that if the proper action of the enforcing agency calls for ordering a building vacated for safety reasons, and that order is ignored, a monetary civil penalty may well not hold up to scrutiny if a disaster were to occur as a result of the agency's inaction. In bona fide matters affecting public health and safety to a dangerous degree, the Construction Official must weigh carefully the possible need for an injunction or restraining order from the Superior Court as a more powerful tool to require someone to abate a violation or terminate an unlawful or unsafe occupancy.

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STOP CONSTRUCTION ORDER

N.J.A.C.5:23-2.31(d) 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 upon 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.

No person shall continue, or cause or 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. 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 the regulations, law or ordinances.

Many officials use the Stop Construction Order as a big hammer because it carries with it the only penalty assessed on a daily basis. Anyone who disobeys a Stop Construction Order is subject to a daily penalty whereas other violations must be assessed on a weekly basis. It is important to note that there is no provision for selectively stopping a portion of a construction project. Therefore, when a stop construction order is issued, everything stops!

A Construction Official is responsible to ensure compliance with the regulations for their intended purpose, which is to protect the health, safety and welfare of the people. He is given a variety of tools to use in order to carry out this duty. If the regulations so intended, they could have mandated the use of the Stop Construction Order rather than offer it as a last resort form of sanction. Perhaps this is why it carries a daily penalty so as to reflect the seriousness of the violation as well as the ability to seek injunctive relief from an appropriate court to enforce the order. Although in some cases it is clearly the appropriate tool, you may wish to consider all sanctions available to you which may achieve the same objective.

In an article written by Louis Mraw of the Bureau of Regulatory Affairs in the Construction Code Communicator vol.8 number1, pg.7, he reminds us that,

" The Stop Construction Order may be issued anytime you, as the code official, believe the set of circumstances warrants such actions. Nothing in the regulations

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prohibits you from using your own judgment and discretion depending on the severity of the violation."

UNSAFE STRUCTURES

N.J.A.C. 5:23-2.32(a) all buildings or structures that shall become unsafe or unsanitary or which contain deficient or blocked exitway facilities, or which constitute a fire hazard or are otherwise dangerous to human life or the public welfare or which 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 unguarded or open at the door or window shall be deemed a fire hazard and unsafe within the meaning of the regulations.

The declaration of an unsafe building lies with construction code officials. Buildings damaged by fire are only one example. Code officials have a professional and legal obligation to 'get involved' once notified of a potentially unsafe structure within the meaning of the section; failure to do so may result in a Construction Official being charged with malfeasance under the Tort Claims Act thereby exposing themselves to civil liability. The concept of liability will be discussed later in this commentary. Remember, N.J.A.C. 5:23-2.1 (c) states "these regulations shall control all matters concerning use, location and occupancy and shall apply to existing or proposed buildings and structures in the State of New Jersey." Accordingly, every building must be maintained in a safe condition or it is subject to the administrative sanctions of the UCC.

ORDER TO VACATE

N.J.A.C. 5:23-2.32(b)1 When, in the opinion of the Construction Official and appropriate subcode officials, there is actual and immediate danger of failure or collapse of a building or structure or any part thereof which would endanger life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the building or structure, the Construction Official is hereby authorized and empowered to order and require the occupants to vacate the same forthwith. He shall cause to be posted at each entrance to such building a notice reading as follows: this structure is unsafe and its use or occupancy has been prohibited by the Construction Official, and it shall be unlawful for any person to enter such building or structure except for the purpose of making the required repairs or of demolishing the same.

DEMOLITION

N.J.A.C. 5:23-2.32(b)2 Temporary safeguards: when, in the opinion of the Construction Official, there is actual and immediate danger of collapse or failure of a building or structure or any part thereof which would endanger life, he shall cause the necessary work to be done to render such building or structure or part thereof

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temporarily safe, whether or not the legal procedure herein described has been instituted,

N.J.A.C. 5:23-2.32(b)4 Emergency repairs: for the purposes of this section, the Construction Official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

N.J.A.C. 5:23-2.32(b)5 Costs of emergency repairs: costs incurred in the performance of emergency work shall be paid from the treasury of the jurisdiction on certificate of the Construction Official; and the legal authority of the jurisdiction shall institute appropriate action against the owner of the premises for the recovery of such costs.

In an article written by Gerald Grayce of the Bureau of Regulatory Affairs in the Construction Code Communicator vol.6 number 3, pg.3, he states:

"NJAC. 5:23-2.32 details the utilization of the Notice of Unsafe Structure and Notice of Imminent Hazard, or Form 240A. This form is used for more urgent situations than the Notice of Violation. A Notice of Unsafe Structure indicates unsafe conditions, such as occupancy without a Certificate of Occupancy, as opposed to an Imminent Hazard Notice, which implies that serious and immediate life safety concerns are present. A structure about to collapse is an example of an imminent hazard. A Notice of Unsafe Structure provides a relatively short time frame to make the structure safe, while the owner receiving an Imminent Hazard Notice generally is ordered to vacate the structure right away."

PENALTIES NJAC 5:23-2.31 (b)1

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

- Violates any of the provisions of the act or the regulations;
- Constructs a structure or building in violation of a condition of a building permit;
- Fails to comply with any order issued by an enforcing agency or the department.
- 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.

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.

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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. 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 or required information or statement made in any application or request for approval to an enforcing agency or the Department. A person shall be guilty of a separate offense for each violation of a condition of a construction permit.

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 and misleading statement, 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 discovery of the violation,

N.J.A.C. 5:23-2.31(c) The Construction Official may assess a monetary penalty whenever such shall be likely to assist in bringing about compliance.

PENALTY COLLECTION

N.J.A.C. 5:23-2.31(b)6 The penalties pursuant to this section may be collected in a summary proceeding pursuant to the "penalty enforcement law" (N.J.S.A. 2A:58-1 et seq.). Jurisdiction to enforce such penalties is conferred upon judges of the municipal court. In addition to the courts specified by N.J.S.A. 2A:58-2, a 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.

Penalties can be assessed up to \$2000 per violation for serious violations and failure to obey a stop order and can be assessed up to \$500 for less serious violations, except for entry and obstruction violations, which are limited to \$250.00. The penalty may be assessed daily in the case of stop construction orders, and weekly in the case of any other orders. A separate, additional penalty may be assessed once for each and every other violation of the regulations, false or misleading written statement in any application, and each violation of a condition of a construction permit.

Penalties must be preceded by formal Notices of Violation and an accompanying time period allowed for correction except for false or misleading statements, failure to obtain a permit or request inspections or occupancy prior to receipt of a certificate of occupancy.

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Penalty collection is not as difficult under Uniform Construction Code as other codes. A certificate of occupancy cannot be issued until all violations are abated and penalties paid. In cases not involving a certificate of occupancy, uncollected penalties should be collected by: 1) sending a strongly worded letter from the enforcing agency or municipal attorney advising the party of the amount due, the basis of the assessment, and the intent to secure payment in a summary proceeding pursuant to the Penalty Enforcement Law, which may result in a docketed judgment and lien if not satisfied; then 2) request the municipal attorney to file a civil complaint and judgment for penalty in municipal court.

CONSTRUCTION PERMITS

A permit is a regulatory instrument. The legal jurisdiction of the State has determined that a permit is required for the public protection in all construction endeavors other than ordinary repairs. A permit is also just that, permitting or consenting to inspection by the enforcing agency of the entire premises until such time as a certificate of occupancy may be issued. Exercise good judgment and reasonable care. Be alert for telltale signs of other 'unpermitted' construction or other possible violations of the regulations.

N.J.A.C. 5:23-2.14(a) It shall be unlawful to construct, enlarge, alter or demolish a structure, or change the occupancy of a building or structure requiring greater strength, exitway or sanitary provisions, or to change to a different use group, or to install or alter any equipment for which provision is made or the installation of which is regulated by the regulations, without first filing an application with the Construction Official or the appropriate subcode official where the construction involves only one trade or subcode, in writing and obtaining the required permit therefor.

A frequently misunderstood concept is that in New Jersey, there is no such thing as a building, plumbing or electrical "permit". There is only a "construction permit". A construction permit may include any or all of these specialties (subcodes) including fire protection and elevators, but they are not individual permits. This becomes important, for example, where it has been the practice to issue a separate permit for the plumbing work, electrical work and building work in a renovation project. Some agencies have justified this when using the services of a private on-site inspection agency but the fact remains that there should only be one open permit on the job at a time. The truth is that many agencies do this as an improper source of revenue where they have minimum fees for a permit. All additional work performed where there is an open permit should be addressed as an update to the original permit.

A little used provision of the code (NJAC 5:23-2.15(a)) permits the enforcing agency to require the designer to evaluate the use and occupancy of all parts of the

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building or structure and of all portions of the site or lot not covered by the building or structure, and any additional information required by the Construction Official.

SUSPENSION AND REVOCATION

N.J.A.C. 5:23-2.16(b) Suspension of permit: any permit issued shall become invalid if the authorized work is not commenced within 12 months after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work.

N.J.A.C. 5:23-2.16(f) Revocation of permits: the Construction Official may revoke a permit or approval issued under the provisions of this code in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based.

Suspension can be very difficult to enforce, especially if the work has commenced. Be careful in determining suspended or abandoned work under the 6-month rule. Many "home grown" construction projects, although they may appear to be abandoned, just proceed at an extremely slow pace.

Revocation is a strong tool. It is recommended that the right of appeal and filing information be included in any revocation order or notice; otherwise, the validity of the order can be challenged.

The difference between suspension and revocation is that a suspended permit when originally issued, complied with all of the requirements on which it was based. Accordingly, it is a common practice to suspend a permit for inactivity. A permit that has been revoked no longer exists. This is due to the fact that information upon which the permit was based was found to be erroneous.

N.J.A.C. 5:23-2.16(h) Posting of permit: a true copy of the construction permit shall be kept on the site of operations open to inspection during the entire time of prosecution of the work and until the completion of same.

N.J.A.C. 5:23-2.16(i) Notice of start: at least 24 hours notice of start of work under a construction permit shall be given to the Construction Official.

Posting of permit and notice of start are two relatively minor administrative provisions the enforcing agency may use when necessary to bring a reluctant owner or contractor to compliance.

CONDITIONS OF A PERMIT

Pursuant to NJAC 5:23-2.16(j), the issuance of a construction permit shall be

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conditioned on:

- Payment of appropriate fees.
- Work will conform to the requirements of the code applicable to the work under which the permit, prior approvals, and any approved amendments were issued.
- The permit is a license to proceed with work and shall not be construed as authority to violate, cancel, or set aside any provisions of the regulations.
- The owner, his agent, the contractor, or other employees will, if requested, assist the enforcing agency in its inspection work.
- All escrows required to be paid by the applicant, pursuant to N.J.A.C. 5:23-4.17(d), in connection with work done under permits issued for development-wide violation correction, pursuant to N.J.A.C. 5:23-2.35(a)1, have been paid unless there is an appeal pending. *(For purposes of applying this paragraph, any escrow due from any person or entity affiliated with the applicant by way of having any common officers, directors, or shareholders with at least a 10 percent interest shall be deemed to be due from the applicant).*
- Any change in ownership is reported through a permit update and that any required replacement performance guarantee has been furnished.

The permit holder has agreed to a variety of obligations that include allowing inspection of the property without the need of a warrant. The importance of these obligations may become evident during the course of a project if a permit holder or his contractor fails to proceed in a manner consistent with the permit application. A Notice of Violation (N.J.A.C. 5:23-2.30(a)) and, if necessary, a penalty (N.J.A.C. 5:23-2.31(c)) may be issued for a violation of "the provisions of the regulations" or of the permit itself. An enforcing agency may have to reference the citations of the previous sentence in its Notice of Violation.

You will also notice that permit issuance is never conditioned upon payment of a penalty. In an article written by William Ferguson of the Bureau of Regulatory Affairs in the Construction Code Communicator vol.8 number 3, pg.6, he states,

"Our response to complainants (applicants being denied permits until the payment of penalties) is to inform them that you, the code official, should not hold up the permit until the fine is paid. Withholding of the certificate of occupancy or approval until the penalty issue is resolved is the appropriate way to deal with this situation under the UCC regulations."

INSPECTIONS

N.J.A.C. 5:23-2.18(b)4 Additional inspection schedule: where buildings proposed for construction exceed two stories in height or by their nature pose complex or unusual inspection problems, the Construction Official or appropriate subcode official may specify additional or special inspections to the applicant in writing prior to the issuance of a permit. The applicant by accepting a permit shall be deemed to have consented to those requirements.

N.J.A.C. 5:23-2.18(c)1 Notice for inspection: the owner or other responsible person in charge of work shall notify the enforcing agency when the work is ready for any required inspection specified herein or required by the Construction Official or appropriate subcode official. This notice shall be given at least 24 hours prior to the time the inspection is desired. Inspections shall be performed within three business days of the time for which it was requested. The work shall not proceed in a manner which will preclude the inspection until it has been made.

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The regulations are specific as to the required items needing inspection with respect to one and two family dwellings. This was done in order to insure that critical components be checked which would otherwise be concealed within a structure. The limiting of these inspections to four was to allow construction to proceed at a reasonable pace. N.J.A.C.5:23-2.18(b) ii allows for more inspections for buildings other than one and two family dwellings, including fire suppression systems, heat producing devices and other inspections required by the subcodes (not the subcode official). The regulations also allow for additional inspections to be required by an enforcing agency above and beyond the four required inspections provided that (a.) these additional inspections are declared to the applicant at the time of permit issuance and (b.) they must be of the type that will allow construction to continue without interruption.

In an article written by Gerald Grayce of the Bureau of Regulatory Affairs in the Construction Code Communicator vol.5 number 2 offers an example of this:

" Does your municipality require a sheathing or open deck inspection? If the applicant schedules these inspections; does the three business days requirement apply? Is the applicant compelled to wait until you inspect before he starts installing the siding or shingles? The answer is no. We view sheathing or an open deck as an additional inspection, not a required inspection. With that in mind, the applicant has the responsibility to call for the inspection; however, he is not required to wait until you get there before he starts work. It is your responsibility to get to the job and inspect the work while it is being performed."

INJUNCTIVE RELIEF

The Uniform Construction Code provides for notices of violation and orders to terminate violations of the regulations pursuant to N.J.A.C. 5:23-2.30. Pursuant to N.J.A.C. 5:23-2.31(a), when said notices are not complied with, whether or not a notice is appealed to the Construction Board of Appeals, the Construction Official may "request the legal counsel of the municipality 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." What has just been described is injunctive relief that will now be briefly discussed.

On the filing of the complaint seeking injunctive relief, the plaintiff, which in this case would be the municipality, may apply for an order requiring the defendant to show cause why an interlocutory or preliminary injunction should not be granted pending the disposition of the action. If the municipality can demonstrate that immediate or irreparable damage will result to the municipality, temporary restraints or other interim

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relief can be granted prior to a hearing on the matter. If there is no emergent situation, notice is given to the defendant and a return date is scheduled for a hearing on the order to show cause. The municipal attorney must submit written briefs in support of his application for an interlocutory injunction.

It is incumbent upon the Construction Official to work with the municipal attorney to prepare the necessary affidavits in support of injunctive relief. The affidavit should describe the facts of the situation and the previous efforts that have been made by the municipality to achieve compliance on the project in question. If the judge rules in favor of the municipality, an order granting a temporary injunction would be issued. This can lead, after a full hearing on the merits of the complaint, to a permanent injunction enjoining the non-compliant activity of the defendant.

Injunctive relief can be a valuable code enforcement tool in the case of a flagrant violation of the construction code. As indicated in N.J.S.A. 52:27D-134, "neither an appeal to a county, municipal or joint Construction Board of Appeals shall automatically stay an order to stop construction issued pursuant to this act or prevent the seeking of an order in a court of competent jurisdiction to enjoin the violation of a stop construction order." Thus, pursuant to the aforesaid statute, a municipality can apply for injunctive relief even when an appeal of a stop construction order is pending before a Construction Board of Appeals. Although judges are often reluctant to interfere prior to the exhaustion of administrative remedies, an injunction can be issued when there are clear and serious code violations occurring. 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 shall be in addition to, and not in limitation of, any other remedies provided by the regulations, law or ordinance.

N.J.A.C. 5:23-2.32(a) 5 Upon refusal or neglect of the person served with a notice of unsafe structure to comply with the requirements of the order to abate the unsafe condition, the Construction Official shall, in addition to any other remedies herein provided, forward the matter to the legal counsel of the jurisdiction for an action to compel compliance.

An injunction, when sought by the Construction Official, is in essence an order of the court which requires that the defendant cease and desist from all conduct which amounts to a violation of the building code. In almost every jurisdiction in the United States today, injunctive relief is divided into three types: a temporary restraining order (TRO), a temporary or preliminary injunction, and a permanent injunction.

The temporary restraining order is an order issued by the court without notice to the other party and without an opportunity for the other party to be heard. A TRO will

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be issued only in the most extreme circumstances. This should be obvious because, under most circumstances, it would be unconstitutional for a court to take any action without giving notice and an opportunity for the other side unless there is an absolute emergency.

The temporary injunction is a judicial order that is issued pending a full hearing by the court. The temporary injunction is issued only after notice is given to the opposing party and a usually brief hearing in front of the court.

Finally, the permanent injunction is a judicial order that is issued after the court has heard all of the evidence in the case and is issued based upon a final review of the position of both sides.

All three types of injunctions may be issued in a single case. For example, a building official may determine that the conduct of a building contractor is so dangerous to the public at large that work on a project must immediately be stopped. A lawsuit may be filed asking for injunctive relief, and the attorney for the building official and the building official himself may appear in front of the judge that very afternoon requesting a temporary restraining order. Based on the information presented, the judge may issue the temporary restraining order to remain in effect for two or three days. Meanwhile, the judge will set a hearing on the temporary injunction within that two or three day period during which the TRO will be in effect. Immediately thereafter, the TRO is served by an agent of the court on the alleged building code offender, thereby giving notice of the lawsuit and of the court's order that the allegedly dangerous activity cease. Two or three days later, the hearing on the temporary

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injunction is held, and the court, after a short hearing, reaches a tentative conclusion as to whether the injunction should be issued or not. After a temporary injunction is issued, all activity ceases until there is a final, full hearing on the merits of the whole case. After that full hearing, a permanent injunction may be issued.

The factual circumstances and legal standards which must be met in order to receive a temporary restraining order or a temporary injunction should generally be known by building officials. This way, an educated decision may be made as to whether a temporary restraining order or injunction should be sought in any given case.

Both the temporary restraining order and the temporary injunction are usually subject to four legal requirements. First, the building official seeking the injunctive relief must show that there is a significant threat of irreparable harm to the public if the injunction is not granted. Second, the building official must show that the harm the public would suffer if the injunction is not granted is greater than the harm the other party would suffer if the injunction is granted. Third, the building official must show probable cause that he or she will prevail on the legal merits of the controversy. Fourth, the building official must demonstrate that the issuance of the restraining order or injunction is in the public interest. Usually, when representing the building department, an attorney will reverse the order of those four elements. There is rarely a challenge to the contention that the building official is acting in the public interest. The building official has the responsibility to make sure that building construction within his jurisdiction is done in a safe manner. Therefore, generally, the issuance of the injunction will be in the public interest. As to the third element, the probability of success on the merits of the case usually lies strongly in favor of the building official. In most cases, the defendant is in violation of the building code. However, the remaining two elements pose a difficulty to the municipal attorney.

To demonstrate to the court that an injunction should be issued, the building official must prove that some immediate irreparable harm is about to occur. If the construction is not of such a nature that personal injury will occur to members of the public in general, the judge is likely to believe that an injunction should not be issued. Of course, the building official can enforce the code by a civil complaint in municipal court. Thus, the key element in obtaining such an injunction is to demonstrate to the court that immediate, irreparable harm will somehow occur to members of the public in general or to particular occupants of a building.

Some examples of the types of irreparable harm that may be used in order to obtain an injunction are the improper installation of electrical connections, improper installation of fire protective materials, and improper construction techniques. In evaluating whether or not to seek a temporary restraining order, the building official should be aware at all times that it is the immediacy of the harm to the public that

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the judge is interested in. Consultation with local counsel is of course important in determining whether or not injunctive relief should be sought.

CONSTRUCTION BOARD OF APPEALS

Establishment of the Board

The Construction Board of Appeals was established to provide a forum for adjudicating violations arising under the Uniform Construction Act and Regulations. Board members are required by regulation to have sufficient expertise to deal with construction code related matters. They are also required to attend mandatory training courses designed specifically for board members.

The Construction Board of Appeals consists of five (5) regular members and five (5) alternate members who are appointed for staggered terms, by the appointing authority. In the case of a county board, the appointing authority would be the Freeholders. A municipal board would be appointed by the township committee or council. There must also be two special members, one of whom is a licensed professional engineer with municipal site improvement construction experience and one who is a builder. Their terms shall be four (4) years each. They serve as additional members to the regular Board involving cases dealing with the appeal of municipal fees pursuant to P. L. 1995, c.54. *Note: these are not construction permit fees! Uniform Construction Code fees are appealable only to the Department of Community Affairs as set forth in N.J.A.C. 5:23- 4.18 (j).*

Membership

The regular membership shall consist of the following qualifications:

- one person qualified as a Plumbing Subcode Official;
- one person qualified as an Electrical Subcode Official;
- one person qualified as a Fire Protection Subcode Official;
- professional building construction experience, or other person as qualified as a Building Subcode Official; and,
- one person shall be a registered architect or licensed engineer with
- one person certified as a Fire Official (primarily for cases involving the Uniform Fire Code but hears other matters as a regular member).

Hearing Adjournment

Adjournment is permitted if:

- Less than five members are present;
- Appeal subject discipline is not present;
- Fire Official is not present for fire cases;

Construction Official Commentary

- Either special member not present for P.L. 1995, c.54 cases;
- Elevator subcode case only if board has a qualified member and is not present.
- No adjournment without the Local Enforcing Agency consent if matter is life safety in an occupied building.

The Uniform Construction Code requires the applicant's consent for any extension of the 10 day time period, which the board has to consider the appeal and issue a decision. In the past, this was abused by some applicants who were willing to extend the time for decision in order to maintain the status quo. The regulations now recognize the need for prompt resolution of matters involving life safety in occupied buildings. Accordingly, in those appeals, any adjournment of the matter now requires the consent of the enforcing agency.

Decision of the Board

Decisions are due within 10 business days of submission.

- Regarding actions, decisions or notices of the Local Enforcing Agency, the Board may affirm, modify, or reverse any action, decision, notice or order.
- Also may remand back to the agency for further action.
- If reversed, modified or remanded, the Board must include specific details explaining why.
- Fire code Imminent Hazard order decisions are due within 48 hours, then may apply to the DCA for a hearing.

Penalties

The Board may reduce a penalty if clearly excessive or void if found to be unauthorized.

The procedures for board decisions have been clarified. The board must now specify in its decision the reasons for any disagreement it may have with the actions of the enforcing agency.

A board must explain in its decision any reduction of a penalty and indicate why the reduction will not impede deterrence of future violations. Penalties may be reduced only if they are clearly excessive or not authorized by statute or rule. The enforcement costs incurred by the local enforcing agency are to be taken into account. A penalty is not to be eliminated if there was no good faith compliance effort prior to the initial penalty; also, any reduction of the penalty shall be contingent upon correction of the violations within 30 days.

Construction Official Commentary

A stay of proceedings is when any party including any enforcing agency may appeal a decision of the Construction Board of Appeals, to the Law Division of the Superior Court within the time allowed by the rules of the court. In all cases, decisions shall be based upon applicable statutory rule and code provisions and upon the evidence presented and accepted by the board.

Neither an appeal to a county, municipal or joint board of appeals nor a departmental appeal nor an appeal to a court of competent jurisdiction shall automatically stay an order to stop construction issued pursuant to this act or prevent the seeking of an order in a court of competent jurisdiction to enjoin the violation of a stop construction order

Enforcement Proceedings

In an article written by Robert Hilzer of the Bureau of Regulatory Affairs in the Construction Code Communicator vol.4 number 4, pg.5, he states,

In a summary proceeding under the Penalty Enforcement Act, a municipal court has no jurisdiction to conduct fact-finding hearings concerning the validity of the penalties per se (refer to *State of New Jersey, Department of Community Affairs v. Wertmiemer*, 177 NJ Super. 595; App. Div. 1980). The factual basis for the penalties may be challenged only by way of administrative appeal, an appeal to the Construction Board of Appeals. An applicant who has already had the opportunity to appeal the penalty before the board cannot appeal the merits of the penalty in a penalty enforcement proceeding.

The powers of a municipal court in these matters are limited to collection of the penalty or enforcement of any order of the Construction Official that has been affirmed by the Construction Board of Appeals. Although the municipal court may be involved in other matters such as issuance of administrative search warrants to assist the enforcing agency, it is not their responsibility to get involved with the administration of the Uniform Construction Code. This is the purpose of the Construction Board of Appeals for all matters both technical and administrative involving the enforcement of the UCC.

The enforcing agency should review the entire building file while preparing for an appeal. Pull out anything even remotely connected to the matter at hand. Prepare a chronology of events related to the appeal, organize the supporting documents according to the chronology. This will enable you to give cogent, organized testimony to the Board.

Know what the Code says before you attend the hearing. If there are any exceptions or cross-references, be aware of what they are and how they impact your position, if at all. Even if they don't apply, don't get caught off guard and most

Construction Official Commentary

importantly, be able to demonstrate to the Board that you are a professional who knows the Code.

The Construction Board of Appeals serves a vital role in the success of the Uniform Construction Code. The UCC was never intended to guarantee employment for code officials. Neither was it intended to create layers of bureaucracy. What it was intended to do was to ensure safe and economical construction for the sole benefit of New Jersey's citizens. Both the State and local government agencies created by these regulations were intended to support its goals rather than interfere with them. Accordingly, both code officials and Boards of Appeals are charged with maintaining focus on the purpose and intent of the regulations and their decisions must reflect the same.

NEW JERSEY TORT CLAIMS ACT

Tort – “a wrongful act, injury or damage for which a civil action may be brought.”

Tort Claims Act 59:1-2 Legislative declaration

The Legislature recognizes the inherently unfair and inequitable results, which occur in the strict application of the traditional doctrine of sovereign immunity. On the other hand the Legislature recognizes that while a private entrepreneur may readily be held liable for negligence within the chosen ambit of his activity, the area within which government has the power to act for the public good is almost without limit and therefore government should not have the duty to do everything that might be done. Consequently, it is hereby declared to be the public policy of this State that public entities shall only be liable for their negligence within the limitations of this act and in accordance with the fair and uniform principles established herein. All of the provisions of this act should be construed with a view to carry out the above legislative declaration.

Nonfeasance – “failure to do what duty requires to be done.”

59:2-6. Failure to inspect, or negligent inspection of property

A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property, provided, however, that nothing in this section shall exonerate a public entity from liability for negligence during the course of, but outside the scope of, or shall this section exonerate a public entity from liability for failure to protect against a dangerous condition as provided in Chapter 4 of the Tort Claims Act.

Construction Official Commentary

Comment

This immunity is essential in light of the potential and existing inspection activities engaged in by public entities for the benefit of the public generally. These activities are to be encouraged rather than discouraged by the imposition of civil tort liability. The inclusion of the reference to Chapter 4 is intended to indicate that this immunity shall not apply when dangerous conditions of public property are involved. In those cases Chapter 4 of this act provides the controlling principles of liability.

Misfeasance – "the doing of a lawful act in an unlawful or improper manner."

59:3-3. Execution or enforcement of laws

A public employee is not liable if he acts in good faith in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment.

VARIATIONS

N.J.A.C. 5: 23-2.9(a) no variations or exceptions from the requirements of any subcode of these regulations shall be made, except upon the following findings:

- that strict compliance with any subcode provision, if required, would result in practical difficulty to such owner; and
- that the exception, if granted, will not jeopardize the health, safety and welfare of intended occupants and the public generally.

Review of Variation Application: within 20 business days next succeeding the receipt by the Construction Official of the application it shall be denied or granted by written order stating the reasons therefor. The application shall be deemed denied for purposes of appeal if no decision is forthcoming within such 20-day period. Records of all applications for variation and actions taken thereon shall be available for public inspection at the enforcing agency during normal business hours.

Final Decision on Variations: the appropriate subcode official(s) shall make the final determination with respect to matters within their jurisdiction. The Construction Official shall notify the applicant of that determination. Whenever an application for a variation shall result in contradictory or inconsistent determinations by different subcode officials having jurisdiction pursuant to N.J.A.C. 5:23-3, the Construction Official shall rule as to which subcode official's determination shall be final and shall notify the applicant of that ruling. Whenever the Construction Official shall be certified in a particular subcode, he may modify the determination of the subcode official.

Construction Official Commentary

Variations involving the fire protection subcode require consultation with the local fire service. The opinions of the local fire service shall not be binding on the enforcing agency. With the recent adoption of the Rehabilitation Subcode there is now a provision whereby in matters involving the Rehab subcode, if the municipal fire official is also licensed as a fire protection subcode official, they must not only be consulted but must approve any variations.

The intent of the variation process was to provide a mechanism by which an applicant could seek relief from a code requirement, which would pose a practical difficulty. When properly executed, the process allows the appropriate subcode official the ability to exercise good judgement and draw upon their knowledge in matters where strict compliance would pose a hardship on an applicant. Their responsibility is not to disregard or set aside a code requirement rather, they are charged with understanding the reason for a given code requirement and insuring that reasonable provisions are made to achieve the intent of the code. In no case may a variation be granted which would jeopardize the health and safety of the occupants or the general public.

This last concept is extremely important because there is sometimes a tendency to grant variations especially to homeowners who are willing to accept conditions less than those required by the code. The problem is that the Uniform Construction Code was intended to set a minimum standard of construction. Accordingly, before a variation is granted, consideration should be given to any future occupants of a building. Remember, there is a certain expectation that a building meets some minimum standard and future occupants should not be deprived of that fact just because a previous owner was willing to accept the responsibility for something less.

The burden of proof in any request for a variation always lies with the applicant. The UCC is very clear that no variations shall be made except upon certain positive findings that a practical difficulty, not merely economic, is posed, and that in no way will the public health or safety be jeopardized.

If the enforcing agency is not comfortable with the variation application and supporting documentation provided, either deny the case or request additional data. Remember, the Construction Official is not responsible for writing the UCC, just administering it.

If a variation is granted, do so in writing, and be sure to spell out the findings clearly that there is indeed a practical difficulty, that the safety of the occupants and the public will not be jeopardized, and that the alternatives proposed are feasible and provide some rough equivalent level of safety. Remember, this document, as part of the permit application, becomes part of the permanent file and will be retained by the enforcing agency for the life of the structure (N.J.A.C. 5:23-2.16A).

Construction Official Commentary

There are two ways to deny a request: If the required conditions are not met, deny the request in writing, including those areas not satisfactory within 20 business days. Be sure to include the applicant's appeal rights in any such order. This way, if appealed, the enforcing agency's reasons for denial will become the subject of the hearing, and the local official will be entitled to plead his case. An alternate method of denial is to simply do nothing in the 20 business days. While this is considered a denial for purposes of appeal, if the applicant does choose to appeal, he in essence pleads the merits of the variation application before the Construction Board of Appeals, and the local agency loses a lot of control. There are instances where one method may be better suited than the other. In any case, the board is bound by the provisions of N.J.A.C. 5:23-2.9 when granting a variation (N.J.A.C. 5:23A-2.30)).

Malfeasance – “commission of an act that is positively unlawful; wrongdoing or misconduct, especially by a public official.”

Willful Misconduct-

Marley v. Borough of Palmyra
193 N.J.Super. 271,473 A.2d 554 (L. 1983).

The term ‘willful misconduct’ as used in the New Jersey Tort Claims Act provides that a public employee is not exonerated from liability if his conduct constitutes willful misconduct, which is the commission of a forbidden act with actual, not imputed, knowledge that the act is forbidden. It is more than an absence of “good faith” and is much more than negligence.

INTERFACING WITHIN THE MUNICIPALITY

INTERFACING WITHIN THE MUNICIPALITY

INTRA-DEPARTMENTAL
Construction Official

Construction Official Commentary

- Oversees front counter service for the dissemination of information pertaining to the “Mission Statement” of the building department and its ability to help the public.
- Prepares and maintains handouts, displays and/or the employee response to offer to help an applicant fill out a permit.
- Monitors and supervises the application and permit processing.
- When requested, assists the technical assistant in determining what prior approvals and plan reviews are required.
- Reviews and authorizes the completed permit document.
- Oversees the clerical duties of a subcode’s plan review.
- Monitors and supervises the inspection process.
- Monitors and supervises ongoing inspections.
- Reviews daily inspection reports.
- Reviews each report for critical indicators and activities.
- Reviews each report for accuracy prior to issuance.
- Monitors and supervises the processing and issuance of certificates.
- Authorizes issuance of Temporary Certificates of Occupancy (TCO) and notes unresolved conditions.
- Reviews and authorizes the completed certificate.
- Monitors and supervises the processing of notices.
- Completes and distributes notices and variation decisions, when appropriate.
- Reviews and authorizes notices issued by the subcode official.
- Prepares Notice of Violation and Order to Terminate/Notice and Order To Pay Penalty.
- Provides application for variation.
- Reviews and authorizes variation decisions made by the subcode official.
- Takes appropriate action in response to a decision of the Construction Board of Appeals.
- Prepare Notice of Unsafe Structure.

INTER-DEPARTMENTAL

The Construction Code Agency is an entity unto itself when speaking of construction code enforcement. However, in the overall municipality it is just one of many departments furnishing services to the residents of the municipality. The interaction of these departments is an essential part of a professional operation. The Construction Official should be cooperative to all the departments requesting help. The official must furnish information to the assessor’s office on all permits issued, Certificates of Occupancy,

Construction Official Commentary

applications for a variation, or anything that will possibly affect the assessment of a premise.

The Construction Official should communicate personnel information such as vacation taken by departmental personnel, sick time, overtime, compensatory time, etc., to the personnel officer for the municipality. The Construction Official should also see that all personnel forms are filled out and returned promptly. If applicable, the construction official should work with the employee's union as specified by contract.

The information on fee schedules, amount of fees collected, training fees to be transmitted to the State, and other financial data must be furnished to the finance department. In addition, the method of collecting and reporting receipts of the agency must conform to the finance officer's requirements.

Any attempt to define the cooperation necessary among the construction department and the other public safety departments (police, fire, health) would be insufficient. There must be complete cooperation and communication with all these departments so that each may function effectively. Also, the planning board and board of adjustment should work closely with the Construction Official regarding the technical advice of code matters that may affect their decisions. If prior approval by any other department is mandatory, it must be supported by a local ordinance or land use law, which should grant the Construction Official the ability to stop a project if the conditions of a prior approval are not being met.

The Construction Official should see that the municipal counsel is furnished with copies of the Uniform Construction Code regulations and subcodes, and that these documents are kept up to date. When the Construction Official refers a matter to the counsel, the Construction Official can refer to the sections and the attorney will be able to understand the action of the agency.

Mayor and Town Council/Committee

The Mayor and Council /Committee are considered the highest authority in a town. The Construction Official may have to answer directly to the governing body in certain municipalities on certain issues. The Construction Official should work closely with all elected officials to promote public safety through education, proper filings and inspections, and if needed enforcement. Safe buildings are no accident.

The Uniform Construction Code Act sets the appointment time of the Construction Official and the subcode officials as four year appointments.

Construction Official Commentary

Further, if an official were appointed to a second four year term, the official would have tenure of office (N.J.S.A. 52:27D-126b). This was an attempt to remove the enforcement agency from the political pressures that existed in some areas. However, the Construction Official should not take the attitude that because of the regulations the agency can totally disregard the political scene. Whereas the office should be free of all partisan politics, it must still realize that they work within a political system.

The governing body, or in some cases the manager or administrator, controls the purse strings and sets policy for the operation of all departments in the municipalities. The Construction Official controls the operation of the staff and the day-to-day operation of the agency, but only within the parameters set by the governing body.

The Construction Official should keep the governing body informed at all times as to the activity of the agency. Monthly reports, reports of staff accomplishments, and reports of possible problems that may be brought to their attention from other sources are all methods of establishing good communication with the governing body.

The agency is constantly dealing with the public, and the public elects the governing body. Therefore, while there should be no special treatment afforded any person when it comes to enforcement, fair and impartial treatment and keeping the governing body well-informed goes a long way toward establishing harmony.

The Construction Official should always treat the office of mayor or council person with respect no matter what individual holds that position.

Town Administrator or Town Manager

As Construction Official, he/she may be your immediate supervisor. On certain projects you will have to keep the administrator informed. If a town owned project is to be constructed or renovated, typically the administrator will serve as the owner.

In most towns you will be required to keep the town informed of your department's action by giving the administrator monthly reports.

Town Clerk

Generally, the clerk has broad knowledge of the entire town.

Construction Official Commentary

The clerk may sell zoning maps or code books to the general public. The clerk will confirm payment of escrow and bond placement, obtain the signatures for the developer agreements. The clerk can also obtain the Mayor and Council's approval and define the conditions for temporary approvals.

Zoning Board of Adjustment

A possible sign off on plans which went before the Board Adjustment for a variance may be required. The Board of Adjustment resolution should be placed in the department record files. Conditions of the resolution should be noted by the Construction Official to the subcode official and enforced as a condition of the permit: i.e., permitted uses.

Zoning Officer

The zoning officer will sign off on the permit for compliance to the zoning ordinances of the town and county. Additionally, a sign off on a permit for usage of structure will be required. Under 5:23-2.2 (e) of the UCC, the following is noted: where provisions specify requirements for structural, fire and sanitary safety, no provision of any municipal zoning or other municipal code shall conflict, govern or have effect.

Where the provisions specify requirements with respect to location, use, permissible area and height, and the municipal zoning code establishes requirements as well, then the more restrictive requirements of this code or the zoning code shall govern.

Additionally the zoning officer may inspect and enforce a local maintenance code; if so the Construction Official should look for reports of work without permits and/or dangerous conditions.

Planning Board

A possible sign-off on the site plan, which went before the Planning Board for a variance may be required. The Planning Board resolution should be placed in the department record files. Conditions of the resolution should be noted by the Construction Official to the subcode official and enforced as a condition of the permit: handicap parking and access, setbacks, and permissible height and floor space.

In preparing the budget for a building department the construction official may benefit by a review of recent subdivision approvals for it may serve as an indicator of work to follow for the building department.

Construction Official Commentary

Town Engineer

Look to the engineer for information about designation of flood plains, wetlands, transition areas and stream encroachments.

A possible sign off for prior approvals on site work, local roads, and/or public work may be required. The engineer can clarify the conditions of an approved site plan or subdivision. The engineer will administrate the permits and inspections for soil moving and site work.

Shade Tree Commissioner

The Commissioner will define landscaping needs for Planning Board and/or Board of Adjustment site plan approvals. The Commissioner will assist the borough engineer in plan review, planting material specs, and inspection. The Commissioner will maintain all public property plantings.

Department of Public Works (DPW)

Typically the DPW will oversee a town's recycling program. Assistance in demolition tonnage reports may be needed. The DPW will also approve for and oversee construction for curb cuts, and sewer work from the clean out.

Board of Health

In some towns before any residential plan for an addition, accessory structure or new house is issued, the Board of Health should review and sign off on the plans as a prior approval. Other needs for a prior approval may include a structure serviced by well and private septic, a new well or septic field, or an increase in the number of bedrooms which may require a possible upgrade of the current private waste disposal.

A prior approval for the demolition of a structure is required to insure proper extermination and asbestos abatement if needed. Look to the Board of Health for verification of asbestos abatement license of the contractor. Confirmation of notice to all applicable utility companies should also be verified prior to demolition. A sign off from the Board of Health on grease traps and interceptors may be required. Board of Health approvals are required on food service areas and places.

Plan review and inspection for Board of Health approval for all public swimming and bathing areas is required, as well as for kennels, pet shops, shelters and pounds.

Fire Department

Construction Official Commentary

A representative of the fire department will assist in the approval of a site plan to properly prepare for fire equipment access. If clarification is needed the Construction Official should review with the representative.

The fire official typically makes annual inspections of every commercial property. They can be encouraged to notify the building department of work being done without permits or of dangerous conditions. Reports of dangerous conditions can also be looked for from the fire department after any fire in town.

Financial Officer

The financial officer deals with payroll and other expenditures. The financial officer will collect for special fees such as Council on Affordable Housing contributions, and offsite improvements.

The financial officer and the Construction Official will prepare an annual budget for expenses and capital expenditures. The financial officer may also be able to help the building department in the preparing and maintenance of the fee schedule. The financial officer will prepare, review with the Construction Official, and sign for the "Uniform Construction Code Annual Report".

Tax Collector

You must be in touch with the tax collector, so the town can see which projects are completed and should be added to the tax rolls. The tax collector will get a copy of the Uniform Construction Code, form 170 "Construction Permit" in order to see what jobs are in progress.

From required inspections and revaluations the tax department may be able to identify properties which have done work without permits.

Town Attorney

Confer with the town attorney on any complicated court and/or legal matter. The Construction Official may also wish to review any decision by the building department which may have an adverse effect such as a stop work order or an order for demolishing. The town attorney represents a building department in an appeal.

Municipal Court Clerk

The municipal court clerk will collect contested penalties and record summonses and complaints under the Uniform Construction Code.

Police Department

Construction Official Commentary

The police department will be needed to help close roads if necessary under the UCC. In case of disorderly persons, they can be called to keep order. The police department can also assist in delivery of notices and in the enforcement of allowable construction hours.

INTERFACING OUTSIDE OF THE MUNICIPALITY

INTERFACING OUTSIDE THE MUNICIPALITY

GOVERNMENTAL AGENCIES

All defined conditions by a governmental agency if supported by law or ordinance shall be considered by the Construction Official as a prior

Construction Official Commentary

approval, which must be noted by the Construction Official to the subcode official and enforced as a condition of the permit.

Federal

All Federal owned buildings are not subject to the control of the UCC. Refer to Bulletin # 93-2

Any building project interfering with a Federal highway like a curb cut or cutting through a highway would require their approval. This would be a prior approval and will be needed before the issuance of certificate of occupancy, if not sooner.

Each month the census report shall be mailed to the Federal Government. The Construction Official should look for information mailed or faxed to the town to be used as a resource and sometimes for public announcement specifically in a time of emergency.

State

The UCC Act requires that construction permits for State buildings be issued by the Department and that inspections of those buildings be performed by State inspectors. A State building is a building situated on State property. Refer to Bulletin # 93-2.

Under 52:27D-123.2 Commercial Farm Buildings shall be governed by the Department of Community Affairs and the Secretary of Agriculture.

Any building project interfering with a State highway, like a curb cut or cutting through a road, would require Department of Transportation approval. This would be a prior approval and will be needed before the issuance of certificate of occupancy if not sooner.

The Wetlands Act, the Pinelands, Stream Encroachment areas and the Flood Plain areas are all under the auspices of the New Jersey Department of Environmental Protection. Any work in these areas require a prior approval which must be secured before an application for a permit can even be considered.

Prior approvals before the issuance of a permit are also required for: Educational – Review of Public School Facilities under N.J.A.C. 6:22 and 5:23.1.4. Construction and Alteration of any Health Care Facility shall be in accordance with the Uniform Construction Code and the "Guidelines for Construction and Equipment of Hospital and Medical Facilities". See N.J.A.C. 5:23-1.4 and the licensing requirements of all Rooming and Boarding Houses.

Construction Official Commentary

Other examples of work which must be done to satisfy State requirements which the building department should look for proof of as a prior approval before the issuance of a certificate of occupancy include:

- Compliance of the underground storage tank systems N.J.A.C.7:14B.
- Abandoned wells N.J.A.C.7:9-9 for which compliance with N.J.A.C. 7:9-9.1 shall be evidenced by a certification issued by a well driller licensed by the D.E.P.

The Department of Community Affairs shall be the sole plan review agency for the following under N.J.A.C. 5:23-3.11(a):

- Electrical generating stations and substations, including nuclear power plants
- Incineration plants
- Solid waste disposal plant
- Class I and Class II structures where required in accordance with NJAC 5:23-4.3A and NJAC 5:23-4.24(b)2.
- Casino Hotels
- Public mausoleums, vaults, crypts and other structures intended to hold or contain human remains.

All premanufactured systems for Class I and Class II structures other than those authorized to be approved by an inplant inspection agency licensed to perform Class I and Class II plan review as provided in NJAC 5:23-4A.10 and all onsite installation of Class I and Class II premanufactured construction within the jurisdiction of a local enforcing agency that is not a Class I or Class II agency, as the case may be.

The Department of Community Affairs shall be the sole plan review agency for elevators, escalators and moving walks in the groups other than R-3, R-4 or R-2 structures in which the elevator devices are wholly within dwelling units and are not accessible to the general public, in all buildings and structures other than those that are in a municipality that has an elevator subcode official or are otherwise within the plan review jurisdiction of the local enforcing agency.

The Department of Community Affairs shall be the sole agency for enforcement of the Barrier Free Recreation Standards of the Barrier Free Subcode.

The Department of Community Affairs shall be the sole agency having authority to grant variations from the requirements of the Asbestos Hazard Abatement Subcode pursuant to N.J.A.C. 5:23-8.4

Construction Official Commentary

The Department of Community Affairs shall be the sole enforcing agency for the following:

- Amusement Rides
- Ski Lifts
- High Pressure Boilers
- Refrigeration Systems
- Pressure Vessels
- Liquefied Petroleum Gas Installation, except one and two family residential (Building subcode use group R-3 which jurisdiction is retained by the municipal agency.)

County

Under NJS 52:27D-126c, all county projects and municipal projects are exempt from all fees which the town would normally charge. Also, all State surcharge training fees do not have to be paid. Please note: Fees for all public schools are exempt.

Any building project interfering with a County road, like a curb cut or cutting through a road, would need the County Road Department approval. This would be a prior approval and will be needed before the issuance of certificate of occupancy if not sooner.

Prior approvals before the issuance of a permit are also required for: County Soil and Sediment control on subdivision and excavation of over 5000 cubic feet. Any project connected to a County Water System unless town supplied-then it falls under the local Board of Health. Any project connected to a County Sewer Treatment Facility-unless town supplied-then it falls under the local Board of Health and Coastal Area Facilities for review.

Private

Dealing with third-party, privately owned inspection agencies requires a contractual agreement. The hiring of a building, electrical, plumbing, fire, and/or an elevator inspector is possible. All contracts must be bid for according to DCA rules and instructions.

CITIZENS

The Construction Official's greatest challenge is to deal effectively with the public. Who is the public? The public are the homeowners, the taxpayers, the contractors, the architects, and the engineers, in other words, the persons who come to the agency office to transact some kind of business. The Uniform

Construction Official Commentary

Construction Code regulations charge the Construction Official with the duty of providing applications whenever necessary. The treatment of the public by all members of the agency is important. Some laymen have no idea of the construction department's function, whereas others believe the department personnel exist just to tell homeowners that they cannot do what they want to do on their own property. Some contractors view the inspectors as enemies who wish to cost the contractor as much money as they can. They also feel that many inspectors have no idea of the problems faced by contractors on the job.

When the Construction Official and staff take the time and have patience to assist persons, explain the purpose of certain procedures, service contractors as promptly as possible showing no favorites, investigate complaints, and respond to the complainant as to the action taken or not taken, they go a long way toward dispelling the bad image that some agencies have created.

Time spent assisting homeowners and explaining the reasons for certain actions is never wasted time. Often it is quicker for a subcode official to indicate the proper way to fill out an application form by doing it with the applicant than to attempt to explain it and have to correct an error because of a misunderstanding on the part of the applicant. Dealing with different individuals cannot be taught. Each person is different and is faced with what he or she considers a unique problem.

The best way to consider the problem is to treat each person as you would expect to be treated. Treating people in a calm, polite, friendly manner will instill a sense of professionalism, which they will respect. They may not always agree with you but will respect the job you have to perform. Further, if you find they do not agree, advise them of their appeal rights and assist them in filing an appeal; thus they will see that it is not a personal matter.

The Construction Official should impress on the staff that popularity is not the goal of the code enforcement profession, but their actions should be fair and impartial. The primary goal of code enforcement is to gain compliance with the law in order to protect the health, safety and welfare of the entire public. Dealing with the public can be trying and frustrating at times, but the reward comes when someone comes into the office and says "Thank you for all your help."

Civic groups, school classes, builders associations, Lions clubs, and Kiwanis clubs should be encouraged to request Construction Official or members of the staff to speak on the various facets of code enforcement. The more the public realizes the function of the agency, the easier it becomes to deal with the problems encountered with the public.

Construction Official Commentary

MEDIA PROTOCOL

Re-active (talking to the media after a problem has occurred):

- When dealing with the news media, always remember to never speak of the Mayor and council of your town in a bad light.
- Never assume anything is “off the record” when speaking to the media.
- Always deal with the media, like the general public, with proper etiquette.
- Give the press facts and only the facts. Try not to give your personal opinion to the press. Make certain all your data is current with the most up-to-date codes and all your research is correct. Outdated information is an embarrassment.

Pro-active (talking to the media and/or the public for the purpose of education):

- Cable television
- Web page
- Media release (e.g., during Building Safety Week)
- Local newspapers
- Radio

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