

New Jersey Fire Inspector Certification Program

New Jersey Uniform Fire Code

Fire Inspector Training Program

Based on the ICC IFC-2015 Edition with NJ adopted changes



Fire Inspector Certification Program

New Jersey Uniform Fire Code Inspector Training Program

Module 4

Legal Aspects of Code Enforcement



Welcome

Instructor

- Before we get started
 - Has everyone signed in?
 - Anyone have any questions?

Legal Aspects of Code Enforcement

In this module we will discuss...

- Legal Authority
- Duties
- Case History
- US Constitution, Right of Appeal Due Process
- Legal Liability

Homework Assignment

Each student, or group of students from the same agency were assigned to obtain a copy of their local ordinance.

Who would like to share and begin our discussion?

Fire Code Enforcement

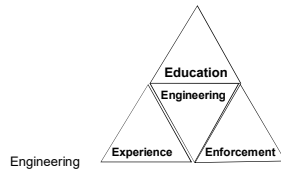
Fire Prevention inspections are the single most important non-firefighting activity performed by the fire service.



FIRE Prevention E's

■ The Four "E's" of Fire Prevention

- Education
- Engineering
- Experience
- Enforcement



Foundation

With 'Enforcement' being the foundation of the four "E's" as depicted on a preceding slide, we need legal authority to be granted through legislative process for that enforcement power to exist.

Fire Code Enforcement

To accomplish our mission we need to have a thorough understanding of:

- The statutes that created the position.
- The statutes that provide the legal basis for inspection activities.
- The laws, codes and ordinances that detail various fire safety requirements, fire official duties and responsibilities.
- Limits to that authority.
- Manner in which these laws, ordinances, rules and regulations can be changed.



Legal Authority

There must be a legal authority for enforcement for a code to be both lawful and effective.

This authority begins at the federal level and works it's way down to the local level through various legislative provisions.

The Path Down

Federal

- The path starts with the U.S. Constitution



State

- It continues with the State Constitution & Laws

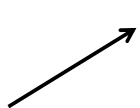


Local

- The authority is then passed to the local level with the enactment of a local ordinance

County

- The municipality may pass the authority to the county by ordinance



Federal Level

The path starts with the Tenth Amendment to the Constitution of the United States of America.

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. “

STATES RIGHTS

Tenth Amendment

This amendment grants the States 'police power' i.e., the authority to adopt laws and regulations necessary to provide for health, safety and welfare.

(examples are Fire, EMS, LE, Health agencies)

Essentially, if the power is not that of the federal level (or prohibited by it), it is the power of the State.

Troubles Developed

However, some of the states adopted laws and/or took actions that violated the rights that were granted to citizens under the Constitution, their position being it was their State to do as they wished within their own borders.

The federal level disagreed and....

I.E- Transport of goods, Tariffs, printing of money etc.

Fourteenth Amendment

The 14th amendment was enacted...

Section. 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Acting under color of law....

The 14th amendment makes it clear that citizens are citizens of the U.S.A. first and the individual States second.

In addition, it makes it clear that no State can adopt or enforce a law that violates the rights of a citizen, or otherwise deprives that person of life, liberty, or property,....

State Level

Under New Jersey's Constitution, the local municipality is not empowered to adopt ordinances or regulations unless the State law specifically grants the municipality the authority to do so.

The Uniform Fire Safety Act

N.J.S.A. 52:27D-192 et.seq. grants this authority for fire code purposes.

N.J.S.A. 52:27D-202

'Enforcement of act by municipality; ordinance; restrictive regulation by municipality'

This section authorizes the municipality to adopt an ordinance providing for enforcement of the State Uniform Fire Safety Act.

Local Authority

- Legally appointed by LEA
- Must have local ordinance in place to enforce code



County Level

The same section of law empowers the municipality to designate the county fire marshal as the local enforcement agency.

State Level

The NJ Division of Fire safety has jurisdiction:

- in all state owned and operated facilities.
- has jurisdiction in Counties and Municipalities when authorized to do so by the county or municipality.
- NJ DFS may also assume via court order authority in a county or municipality.

So the path is complete from the federal level down to the local level (or on to county) and there is authority to enforce the fire code by local ordinance.

Fire Code Enforcement

- **Authority** When Fire Inspectors reach the legal basis and limits to their authority they need to consider.
 - Status as members of the public sector, including the right, responsibilities, and liabilities inherent in being a public officer.
 - The limits and scope of their authority.

Fire Code Enforcement

Liability

- Fire Officials are considered Public Officials. As such they are granted **immunity** from certain kinds of actions.
Actions that are within their duty or jurisdiction to perform.
- Immunity is not guaranteed.


Fire Code Enforcement

Liability

- Generally **not held liable** for discretionary acts. Acts or duties that fall within their authority to perform or Actions considered necessary to fulfill their responsibilities.
- Can be held liable for:
 - **Ministerial acts: Acts, actions or manner in which they carry out or perform an act or policy.**

Fire Code Enforcement

■ **Tort**
(Wrongful Act)



Civil Liability

- Civil Rights Act of 1871 (42 U.S § 1983)
- New Jersey Tort Claims Act

Fire Code Enforcement

■ **Tort** (Wrongful Act)


Civil Liability

• **Civil Rights Act of 1871 (42 U.S § 1983)**

“Every person who under color or any statute, ordinance, regulation, custom or usage of any State or Territory, subjects, or causes to be subject any citizen of the U.S. or other person within the jurisdiction of any rights privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action of law, suit in equity, or other proper proceeding for redress”

Fire Code Enforcement

■ **Tort**
(Wrongful Act)



Civil Liability

- New Jersey Tort Claims Act Title 59, enacted 1972 chapter 45
- A public entity is deemed **not** liable for an injury, except as otherwise provided within the Act.
- A public official or employee **is** liable for an injury caused by his act or omissions to the same extent as a private person.

Fire Code Enforcement

- **Duty** In 1976 the U.S. Supreme court held that fire inspectors in conducting code enforcement inspections had taken on a duty and must use reasonable care to exercise that duty.

Example:

An inspector inspects a property and determines there are violations present, but fails to follow-up to ensure that corrective action was completed.

Inspector can be held liable if fire occurs as well as any deaths and injuries resulting from the incident.

Fire Code Enforcement

■ **Special Duty**

Fire Officials /Inspectors take on a Special Duty

Special Duty is one which a person has moved from a position of safety to a position of danger because they relied on the Official/Inspector's expertise.

■ Issuing of Permit

■ Allowing continual occupancy.

■ Failure to act in timely manner.

Fire Code Enforcement

■ **Duty to Inspect**

Most of the model code agencies have wording in the code enabling law or adopting rules that list the duties of the Official to perform. This usually does not allow for selective enforcement of the rules .

Referencing N.J.A.C. 5:71-3.3

Fire Code Enforcement

Duty to Inspect

- Failure to inspect a property does not impose a **Duty** upon the inspector unless the laws or statutes imposes such a Duty, or there is known code violations.
 - Laws that single out a particular number of inspections or predetermined per select occupancy establishes a **Duty**.
- (Ref. N.J.A.C. 5:70-2.5) (LHU vs non LHU's)

Example:

It is better to conduct fewer inspections of more thorough nature than to perform many haphazard, incomplete or negligent inspections.

Fire Code Enforcement

Civil Rights



Inspections should not be arbitrary or capricious . Inspections should be conducted in a manner which does not discriminate against certain groups or individuals .

Example: inadequately enforcing code. (Qualify Selective Enforcement)

Fire Code Enforcement

■ **Right of Entry**

The **Right to enter property to inspect for code compliance is essential for fire officials to fulfill their duties.**

■ The U.S. Supreme Court has ruled that property owners **do** have the right to refuse a fire inspection unless the fire inspector has obtained a warrant or has adequate reason to believe that the property contains fire hazards.

■ Administrative entry, without consent, of portions of commercial premises which are not open to the public may be compelled only through prosecution or physical force within the framework of a warrant

■ (See vs Seattle 387U.S.41,87 S. Ct.1737)

Fire Code Enforcement

- **Right of Entry** The U.S. Supreme Court has set down guidelines for inspection agencies:
- Inspectors to be properly identified.
 - State the reason for inspection.
 - Request permission for inspection.
 - Invite person in charge to accompany .
 - Carry and follow written inspection procedures.
 - Request a search warrant if entry is denied.
 - Issue stopwork orders for extremely hazardous conditions if entry is denied until search warrant is issued.

See hand-out

Fire Code Enforcement

- **Right of Entry** The U.S. Supreme Court has set down guidelines for inspection agencies:
- Develop and use a reliable written record keeping system of inspections.
 - Guidelines available that define conditions whereby they may stop operations without obtaining permission to enter or search warrant.
 - Ensure that all licenses and permits indicate that compliance inspection can be made throughout the duration of the permit or license .
 - Trained in fire hazard recognition, laws & ordinances.

See hand-out

Fire Code Enforcement

- **Right of Entry** The U.S. Supreme Court has set down guidelines for inspection agencies:
- Examples:
- Inspection of a single family unit. You demand entry to conduct an inspection. There is no known or suspected fire hazards - **"unreasonable search"**
- Inspection of a commercial property without owner's consent is a **"warrantless search"**
- This violates the owner rights under the 4th and 14th Amendments to the Constitution.

Fire Code Enforcement

- **Right of Entry** Search Warrants
Fire Officials as Public Officials can obtain administrative search warrants to conduct or perform inspections. (N.J.A.C. 5:70-2.1(c)1.)

Fire Officials need to know the process to request and obtain such warrants.

- Proper documenting the events leading to the property owners refusal (forms).
- Prior inspection history (past incidents).

Fire Code Enforcement

- **Right of Entry** ■ Refusal of Entry by a property owner is rare. Proper documentation must be provided.



Fire Code Enforcement

Basic code stuff according to New Jersey

Responsibilities of the Fire Inspector

- Conducting inspections
- Issuing violations
- Issuing permits
- Entering complaints
- Testifying at Appeals
- Completing reports
- Maintaining records
- Pre-plan inspections
- Fire investigations
- Public Education



Fire Code Enforcement

■ **Conflict of Interest** N.J.A.C. 5:71-2.9(a)

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

- Consider use of alternate enforcement agency.

Fire Code Enforcement

■ **Conflict of Interest** N.J.A.C. 5:71-2.9(b)

No person employed by an enforcing agency as a fire official/inspector shall engage in, or indirectly for purposes of economic gain with, any business or employment furnishing labor, materials, products or services related in any way to fire safety within the municipality in which he or she is employed or in any municipality adjacent to any municipality.

Fire Code Enforcement

- **Conflict of Interest** N.J.A.C. 5:71-2.9(c)
 Persons subject to this section shall annually report any income or benefits received from any property or business subject to the Code, or from any business furnishing materials, products, labor or services for types of work subject to the code, to the municipal government, shall include a list of all sources of income but need not list the amount.

Fire Code Enforcement

- **Conflict of Interest** N.J.A.C. 5:71-2.9(d)
 No person employed by a municipal enforcing agency as a fire official/inspector shall be employed to appear before any construction board of appeals or be involved in any court proceeding within the State, as a paid expert witness, or in any other compensated capacity, in any proceeding involving the enforcement of the UFC.NJ, except on behalf of another enforcing agency or as a court appointed witness (see exceptions).

Fire Code Enforcement

- **Conflict of Interest** N.J.A.C. 5:71-2.9(d)1.
 This prohibition shall not apply to any litigation not involving enforcement of the code, or to appearance as a fact witness: nor shall it apply to any activities unrelated to any action for, or an appeal of enforcement of the Code.

Fire Code Enforcement

■ Conflict of Interest N.J.A.C. 5:71-2.9(e)

- This shall not apply to:
1. The ownership of stock or investment of any corporation listed on any national stock exchange.
 2. Any business or employment outside of NJ.
 3. Dual employment by two or enforcing agencies.
 4. Any business or employment not subject the Code
 5. Service as an instructor in a code enforcement training program

Fire Code Enforcement

■ Official Misconduct

N.J.S.A. 2C:27-30-2

The intent to obtain a benefit personally or for another, an act is committed which constitutes an unauthorized exercise of official duties, or refrain of official duties.

Fire Code Enforcement

Duty to Act

N.J.S.A. 2C:2-1(b)2 Criminal Liability

A duty to perform the omitted act is otherwise imposed by law, including but not limited to, laws such as the "Uniform Fire Safety Act", P.L. 1983, c 383(c.52:27D-192 et seq.) the "Uniform Construction Code Act", P.L. 1975, c 217(c.52:27D-119 et seq.) or any other law intended to protect the public safety or any other rule or regulation promulgated thereunder.

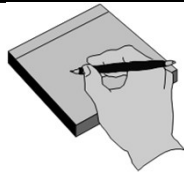
Fire Code Enforcement

Code Alternatives

- Fire inspector's will from time to time be asked to accept alternative materials or systems as being equivalent.
- In N.J. this is permissible. Proper documentation is required to ensure that code issues are addressed safely and a historical record is made.

Fire Code Enforcement

Violation Notice



N.J.A.C. 5:70-2.10(a)

- Whenever the fire official or inspector observes a violation or a provision of this code or local adopted amendments the fire official shall prepare and serve on the owner a written notice of violation identifying the condition, location, code citation and time limit for abatement.

Reviewed under Module 3

Fire Code Enforcement

Duty to Act

N.J.S.A. 2C:40-18(section 2(a))

A person is guilty of a crime of the **2nd degree** if the person knowingly violates the law intended to protect the public health and safety or knowingly fails to perform a duty imposed by law intended to protect the public health and safety and recklessly causes death.

**PENALTY: 2nd degree
crime = \$20,000.00
5-10 years prison**

Fire Code Enforcement

Duty to Act

N.J.S.A. 2C:40-18 (2.b and 2.c)

Section 2.b 3rd Degree if it causes serious bodily injury.

Section 2.c 4th Degree if it causes significant bodily injury.

PENALTY: 3rd degree
crime = \$7,500.00
3-5 years prison

PENALTY: 4th degree
crime = \$3,500.00
Up to 18 months prison

Fire Code Enforcement

Bribery

N.J.S.A. 2C:27-2 & N.J.S.A. 2C:27-6

A person is guilty of bribery by offering, giving, or agreeing to give any benefit to a public official in exchange for the performance, or violation of an official duty.

PENALTY: Value under
\$200.00
3rd degree crime =
\$7,500.00
3-5 years prison

PENALTY: Value over
\$200.00
3rd degree crime =
\$100,000.00
5-10 years prison

Fire Code Enforcement

Gifts

N.J.S.A. 2C:27-2 & N.J.S.A. 2C:27-6

A inspector commits a third degree crime by soliciting, accepting, or agreeing to accept any benefit to influence the performance of official duties.

PENALTY: 3rd degree
crime = \$7,500.00
3-5 years prison



Fire Code Enforcement

■ Departmental Monitoring N.J.A.C. 5:71-2.10.

This provision allows the Department (DCA) to enter the LEA and conduct audits of the agency to determine compliance with the regulations.



Fire Code Enforcement

■ Right of Appeal N.J.A.C. 5:71-2.11. (N.J.S.A. 52:27D-206)

Any person or agency aggrieved by a notice, order, action or decision of the Div. shall be entitled to a hearing before the OAL within 15 days of person or agency's receipt of notice or order.







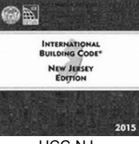
What is a Code?

A systematic statement of a body of law, especially one given statutory force.

(given the ability to enforce)

Types of Codes

- Fire Prevention Code
- Building Code
- Zoning Code
- Housing Code
- Health Code
- Environmental Code

BOCA FPC
IBC 2015
IFC 2015
UCC NJ regs
UCC-NJ

Main Elements of a Code

- Criterion
 - The criterion of a fire code is fire prevention
- Mandatory
 - Every item is a requirement, nothing is assumed or recommended
- Enforceability
 - Legal authority to enforce, and penalties for failure to comply

Code Development

In-house codes

vs.

Models codes

In house codes would be codes developed specifically by your jurisdiction or the state, where model codes would be those developed by a group such as International Code Council Inc. (ICC)

In-house codes

- **Advantages**
 - Can be written to cover special problems
 - May be written to ensure maximum life safety
- **Disadvantages**
 - Conflicts with building code
 - Only small base of input
 - No or limited public hearings
 - Not cost effective

Model Codes

- **Advantages**
 - No conflict with building code if from same organization (most times)
 - Broad base of input (Large group with consensus)
 - Public hearings on input
 - Minimal cost
 - Allowance for development of ideas
- **Disadvantages**
 - Usually only minimum standards
 - Special interest groups may change code to suit their interest

NJ Uniform Fire Code

- Is a combination Model Code/In-House Code
 - Primarily based upon the International Fire Code/2015
 - Includes amendments to address specific NJ needs and deletions
 - Has a Fire Safety Retrofit Code to address older structures prior to UCC
- All of which include public participation for adoption or amendment

What else does a Fire Inspector need to know.....

Areas of Law

- The Fire Inspector must be familiar with:
 - Civil law
 - Tort law
 - Criminal law
 - Environmental laws
 - Other health & safety laws

Areas of Law - examples

- In performing the duties of a Fire Inspector you must also be aware of these areas of law, some activities may identify crimes as arson or false public alarms.
- You will spend more time providing reports and/or testimony for 'civil' cases than any other area of court proceeding if your community has a moderate to severe incident level of occurrence.

Areas of Law - examples

- The law of torts, (legal wrongs), is what involves you in the 'feasances' listed in the next slide.
- When enforcing 17 chapters of hazardous material requirements you will involve actions that effect environmental law issues. There are numerous other health and safety laws to be aware of, multiple dwelling law, PEOSHA, and OSHA .

The 'Feasance'

- The Fire Inspector must be aware of the way they perform their duty:
 - **Nonfeasance**
Failure to perform a duty
 - **Misfeasance**
Performing an act that you shouldn't do
 - **Malfeasance**
Improperly doing an act you have a duty to do

'Feasances'

Whenever you find yourself the subject of a lawsuit you will find the 'legal wrong' (tort), you are being sued for includes one if not all of the three items.

- failing to perform a duty imposed by the UFC
- taking an action not authorized by the UFC
- performing your duties in a negligent manner will cause you to run afoul of these 'torts'

Knowledge Needed

To conduct inspections and otherwise perform your duties under the UFC, a Fire Inspector must have knowledge in all of the areas.

- Building construction
- Fire Protection systems
- Electrical systems
- HVAC systems
- Material handling
- Storage practices
- Hazard recognition (actual & safety)
- Possible solutions
- Post incident investigations (fire, hazmat)
- Related codes and regulations (building, etc.)

Communication Skills are Needed

With all those responsibilities and knowledge you must have the ability to communicate effectively with the regulated community and the general public.

- Peers
- Property Managers
- Maintenance people
- Insurance people
- Engineers and technicians
- General public
- Lawyers

BOTH orally and written

Good Health and Agility Required

- Roof to basement inspections
- Inside and outside all areas
- Climb ladders
- Crawl in tight places
- Enter fire/hazmat scenes
- Wearing PPE

Continuing education (perpetual student)

Once you learn all of these items and perfect all of these skills you don't get to rest.

You must then continue to expand that knowledge and hone those skills whether through self initiated training or mandatory CEUs.

The rules and hazards continue to evolve and you must do so also to keep up with them.

Summary

■ Covered tonight:

- Legal Authority
- Codes and standards
- Areas of law and 'feasances'
- Responsibilities and knowledge
- Continuing education

Review Questions

■ See student manual

- Module 4 - Module review questions

Homework Assignment

Check the class schedule for the next assignment

Reminder

Fire Code Enforcement

If we are to stop the pain and suffering associated with phenomena of fire, we first must have an understanding of exactly what it is, and how it will react. If we are to reduce the numbers of fires and relating injuries, we must have proper fire education & prevention efforts.

Having to fight fires means to have failed !

Why America Burns NOVA 10/1981
