



**FEMA**

R0390

Dear National Fire Academy Student:

Congratulations on being selected to attend the U.S. Fire Administration's (USFA's)/National Fire Academy's (NFA's) "Fire Inspection Principles 1" (FIP 1) course.

You are asked to bring the following items with you for use in the course:

- A calculator with four basic functions (+ - \* /).
- A copy (book or eVersion) of the current International Building Code by the International Code Council
- A copy of your fire code.

You will find your pre-course reading assignment at [https://nfa.usfa.fema.gov/ax/pcm/precourse\\_reading\\_r0390.pdf](https://nfa.usfa.fema.gov/ax/pcm/precourse_reading_r0390.pdf). Please read prior to your arrival to class.

This class is a six day class which starts on Sunday at 8 a.m. Subsequent classes will meet daily from 8 a.m. to 5 p.m., with evening classes possible. The class graduation ceremony is an important part of the course. You are expected to attend this event. All departing travel arrangements should be made so that you do not leave campus prior to the class graduation.

The NFA classroom environment is computer based. Increased numbers of students and instructors are bringing laptop computers or other electronic devices to campus; you are responsible for the security and maintenance of your equipment. The NFA cannot provide computer software, hardware (which includes disks, printers, scanners, monitors, etc.), or technical support for your device. For your convenience, we do provide surge protector power strips at each classroom table.

Should you need to access the Student Computer Lab, it is located in Building D and is available for all students to use. The lab is open daily with a technician available Monday through Thursday from 1700 to 2100 (5 p.m. to 9 p.m.) and on Saturdays from 0800 to 1200 (8 a.m. to noon). The lab uses Windows 7 and Office 2013 as the software standard.

If you need additional information related to your course's content or requirements, please contact Mr. Keith Heckler, Fire Protection Technical Curriculum Training Specialist, at (301) 447-7256, or by email at [keith.heckler@fema.dhs.gov](mailto:keith.heckler@fema.dhs.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Eriks J. Gabliks".

Eriks J. Gabliks, Superintendent  
National Fire Academy  
U.S. Fire Administration

Enclosure

# **CODE ADMINISTRATION AND ENFORCEMENT**

## **TERMINAL OBJECTIVES**

*The students will be able to:*

1. *Explain the code enforcement system and the fire inspector's role in that system.*
2. *Handle situations that are typical of the fire inspector's role in a professional manner.*

## **ENABLING OBJECTIVES**

*The students will be able to:*

1. *Identify the benefits of a code enforcement system and the effects of the community's attitude on that system.*
2. *Define the essential elements of a code enforcement system.*
3. *Describe the legal authority and limitations relevant to fire code inspections.*
4. *Explain "compliance" and describe methods for achieving it.*
5. *Describe the critical importance of thorough documentation.*
6. *Demonstrate elements of effective communication necessary to achieve compliance.*
7. *Explain the rationale for the permit process and list permits required by their code.*
8. *Contrast a formal appeals process with an informal appeals process.*
9. *Contrast proper and improper standards of behavior for an inspector.*
10. *Identify interpersonal skills necessary to effect compliance.*
11. *Recognize ethical and unethical situations for the code enforcement officer.*



## Introduction

“A law is effective only to the extent that it is enforced, and so it is with a fire prevention or building code. Many serious building fires have been the result of, not of code deficiencies, but of lax enforcement (sometimes because of corruptions). A fire resistant floor, for example, is an insufficient barrier to smoke and fire if the architect allows gaps in the floor or a workman punches a big hole in the floor to allow a pipe to pass through. Vigilance is needed in the review of plans and in inspection during construction. Once construction is finished, compromises in fire safety may be hidden from view.

The training of inspectors is, in many places, woefully inadequate. In one major city, the only training for fire prevention inspectors consists of sending them out for a few days with a senior inspector. Architects and engineers complain about inflexibility in codes, but one reason codes toward rigidity and detailed specifications is that local building officials and inspectors are not equipped, because of the inadequate training, to evaluate alternative solutions and tradeoffs.”

New thoughts and recent statements on the foregoing statement were contained in “America Burning, The Report of the National Commission on Fire Prevention and Control” published in 1973!

This is not the first time a governmental study recognized issues with building and fire code enforcement. The President’s Conference on Fire Prevention in 1947 stated:

In brief, the committee recommends that greater attention be given by designers of buildings to recognized standards of construction and strict compliance to established codes and regulations; that governmental officials review the adequacy and extent of existing regulations; that owners and managers of buildings adhere to safe practices and observe standard rules of fire safety; that aggressive action be taken to accelerate the installation of automatic fire protection in new and existing buildings, particularly where safety to life is a compelling factor; that designers, owners, public officials, and the public in general assume their full obligation for the elimination of fire hazards.

Among the recommendations set forth in “America Burning” were:

43. The Commission recommends that all local governmental units in the United States have in force an adequate building code and fire prevention code or adopt whatever they lack.

44. The commission recommends that local government provide for competent personnel, training programs for inspectors, and coordination between various departments involved to enforce effectively local building and fire prevention codes. Representatives of the fire department should participate in reviewing fire safety aspects of plans for new building construction and alterations to old buildings”

The lives and property of everyone in a community can be threatened by fire. Therefore, everyone can (and should) play a role in fire prevention. The head of a household who decides to buy (or

not to buy) a smoke detector; the child who has learned (or has not learned) what steps to take if his or her clothing catches fire; or the restaurant patron who makes a point of checking exits in a crowded establishment before enjoying a meal are undertaking (or not undertaking) fire prevention activities.

Within the fire department, the duties related to fire code enforcement, public education and fire investigation are functional areas that embody complex and detailed activities and may well involve close ties with other local government agencies.

### **Benefits of a Code Enforcement System**

Until the twentieth century, building conditions in the United States were marked by excessive use of highly combustible materials put together without much regard for protection of life or property from fire. Large individual buildings housing vast combustible stocks under one roof, lack of firewalls and vertical cutoffs, wood shingle roofs, and other unsafe factors that contributed to rapid spread of fires were characteristic of the American scene. In many parts of the United States, seasonal droughts and high winds aggravate fire conditions and result in area conflagrations that contribute substantially to the overall high national fire losses. Jurisdictions which invest more in prevention activities have a relatively low threat of fire incidence.

A good code enforcement system:

- Reduces risks of hazards.
- Provides improved fire-safe structures.
- Reduces fire exposure, when a fire does occur.
- Minimizes fire death and injuries.
- Reduces hazards for firefighters, when a fire does occur.
- Controls inherent hazards that cannot be eliminated.
- Reduces workload of firefighters.
- Promotes a more stable community (jobs, confidence, trust, etc.).
- Minimizes property loss (money).
- Minimizes fire insurance costs.
- Improves image of community.
- Maintains/Improves community's economic structure.
- Increases community awareness of fire safety.
- Makes code enforcement easier (previous hazards violations).
- Balances the cost of fire protection between the public and the private sector.

It is accurate to say that effective enforcement can be enhanced through the knowledge of your community's makeup. In today's society, the role of the code official is no longer viewed as an isolated function, but is becoming more active and involved everyday.

## Code Enforcement — Where does it begin?

Code enforcement begins with code application during the review of plans and specifications to assure compliance with fire safety features of the building and fire prevention codes; control of structures through inspection to assure proper exits, interior finishes, fixed fire protection equipment, and other related features; control of occupant capacity and smoking regulations; and control of sales and use of materials and equipment. The last function includes control or limitation of the storage, handling and use of explosives, fireworks, flammable liquids and gases, and other hazardous materials.

Within a given jurisdiction, building and fire officials must cooperate fully if they are to obtain their goal of enforcing both the fire prevention/building codes for effective community fire safety. This effort must consist of **communications, cooperation and coordination**.

## Fire Protection-Life Safety Requirements

A fire prevention code is a document regulating the storage, handling, production and use of hazardous materials. The fire prevention code sets the requirements for testing and maintaining fire suppression and fire detection systems, regulating general fire safety requirements, and maintaining life safety features within a structure. It also authorizes the fire department to assume responsibility for inspection, code enforcement and code administration duties.

The purpose of a fire prevention code is to provide reasonable protection of life and property from the hazards of fire and explosive materials. Fire codes exist to minimize hazards to life and property from fire and panic, exclusive of those hazards considered in building code regulations.

Section 101.3 of the 2015 edition of the “International Fire Code” (IFC) states:

The purpose of this code is to establish the minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations.

Section 1.2 of the 2015 edition of the National Fire Protection Association (NFPA) 1, *Fire Code* provides:

The purpose of this *Code* is to prescribe minimum requirements necessary to establish a reasonable level of fire and life safety and property protection from the hazards created by fire, explosion, and dangerous conditions.

The annex for this section goes on to state: “Consideration for life safety could include occupants, fire department personnel, fire brigade members, employees, responsible parties and the general public.”

A building code is a document that establishes the building requirements necessary for the protection of public safety, health and welfare. Approximately 75 percent of building codes are directly related to fire protection and life safety concerns. The scope of these codes addresses all matters pertaining to the construction of new structures, additions, alterations, remodeling or the change of use of an existing structure. This includes all permanent or built-in fire protection equipment and other safeguards, such as firewalls and separations.

Section 101.3 Intent of the 2015 edition of the “International Building Code” (IBC) states:

The purpose of this code is to establish the minimum requirements to provide a reasonable level of safety, public health and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations.

## **LEGAL AUTHORITY**

### **THE FEDERAL BASIS OF CODE ENFORCEMENT POWER**

#### **The U.S. Constitution and Governmental Power**

The authority to enforce laws is among the governmental powers contained in the U.S. Constitution. This power has come to be known as police power. It is defined as the power to restrict personal freedom and the use of property in order to preserve peace and to protect public health, morals and welfare. In other words, the government can coerce individuals to do (or cease doing) things against their will if it is in the interest of public welfare. Fire safety is considered a public welfare issue because fires are an obvious threat to life and property. Therefore, the power to enforce fire codes is considered to be a police power.

Police power is a constitutional power (i.e., an authority that a government grants to itself in its constitution). For state and local officials, police power originates from their state constitution. Since the right of state governments to adopt constitutions is based on the U.S. Constitution, the U.S. Constitution is the ultimate source of the local code-enforcement official’s code-enforcement authority.

The U.S. Constitution does not explicitly authorize state governments to use police powers. This authority is given to the states indirectly because the U. S. Constitution is silent on the subject. The reason that police power for states is not spelled out in the Constitution is due to historical circumstance. At the time that the representatives from each colony met to write a national constitution, the 13 colonies had already granted themselves the authority to govern through the Articles of Confederation. The framers of the U.S. Constitution then had to craft an instrument that allowed for a split sovereignty, a way for both the federal government and the individual states to have their own governmental powers. The only acceptable means they found was to specify the specific powers reserved for the president, the Congress, and the Supreme Court, and allow the

states to enforce any governmental powers that the federal government did not reserve for these three federal branches. The 10th Amendment was added to the U.S. Constitution to make it explicit that it granted all authority to the states to govern not expressly reserved or prohibited by the U.S. Constitution:

“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.” — The 10th Amendment to the U.S. Constitution.

The U.S. Constitution, then, does not unilaterally reserve the use of police power for itself, nor does it prohibit state governments from using it. Because the U.S. Constitution does not prohibit the states from using police power to govern, the states use police power to enforce fire safety codes and many other laws, ordinances and regulations.

It is up to each state to decide if it wants to pass this power to local jurisdictions and under what conditions. This will be discussed in the section entitled “State Government and Police Power.”

### **Constitutional Limitations on Police Power**

The U.S. Constitution is a general statement of the governmental power that the nation’s founders gave themselves, with the ratification of the citizenry. Since its adoption, several amendments have been approved which spell out the limits or scope of the original language. The limits to police power have been addressed in the Fourth and 14th Amendments. The Fourth Amendment limits the power to search private homes. The 14th Amendment states that no person can be deprived of life, liberty or property without due process of law or the equal protection of the law. In addition to these constitutional amendments, the limits to police power have been interpreted by the U.S. Supreme Court. This section will focus on the impact that the amendments and Supreme Court decisions have had on code enforcement.

Most inspections are routine. That is, the code enforcement official decides to inspect a particular property because it is next on the schedule, not because he or she received a complaint or suspects a code violation. Regarding this practice, two U.S. Supreme Court decisions are notable because they have limited a code enforcement official’s use of police power to enter private property when there is no probable cause to suspect a violation. In *Camara v. City of San Francisco*, the city convicted Camara for refusing to allow a housing inspector to enter his apartment to conduct an inspection. Camara appealed, but the appeal was denied up through the California Supreme Court. Camara then appealed to the U.S. Supreme Court, claiming that his conviction was based on a violation of his rights under the Fourth Amendment to the U.S. Constitution, and therefore was invalid. The Fourth Amendment states that a person’s right to privacy in his or her own home includes protection from warrantless search and seizures. The U.S. Supreme Court reversed Camara’s conviction, stating that the housing inspector should have gotten a warrant to inspect the apartment when Camara refused entry.

In the case of *See v. City of Seattle* (1967), the U.S. Supreme Court dealt with the same Fourth Amendment issue, but this time the court expanded the definition of privacy in a dwelling to

include the **private** part of a business property (that area of the business not open to the public). The city of Seattle convicted See for refusing to allow a Seattle code enforcement official entry into his locked warehouse to conduct a routine inspection. The State courts upheld the conviction up through the Washington Supreme Court, and See appealed to the U.S. Supreme Court that the conviction was a violation of his Fourth Amendment rights. The court reversed the conviction, stating that the reasoning in the decision in *Camara v. City of San Francisco* was applicable to parts of businesses that are not open to the public.

Because of these two U.S. Supreme Court decisions, code enforcement officials can no longer employ police power to inspect private dwellings and parts of businesses that are not open to the public. The U.S. Supreme Court has compared the constitutional authority of police power with the constitutional right to privacy, and has concluded that the constitutional right to privacy outweighs the inspector's right to enter those occupancies, unless a search warrant has been issued. A condition of the warrant is that the code enforcement official must show probable cause that a fire code violation exists.

The U.S. Supreme Court decisions did not leave inspection officials with no recourse. In the *See v. Seattle* decision, the court noted that jurisdictions could still enter these types of occupancies at reasonable times without a search warrant if the inspection were required to satisfy the conditions of a license. If, for example, a city requires business licenses, it could add the requirement of passing an annual code inspection as a condition of receiving and continuing the license.

A similar method has been used for certain residential occupancies in some areas of the country. Jurisdictions have created licenses for rented residential property (both single-family dwellings and apartment buildings) that require an annual fire and health inspection as a condition of the license.

### **Governmental Power Reserved for the Federal Government**

As was noted above, the U.S. Constitution grants all governmental power to states that the U.S. government does not prohibit or reserve for itself. The powers that are reserved for the U.S. government are listed in Article I, Section 8, titled "Powers of the Congress." Article I, Section 10 restricts the powers of the states. For example, states cannot sign treaties with foreign governments, nor can they coin their own money.

Two of the governmental powers reserved for the Congress that directly affect local code enforcement officials are interstate commerce and the control of federal enclaves. Both of these issues affect local governments because they involve police powers that overlap. For example, local governments might be required to provide police and fire protection on interstate highways and at federal installations in their jurisdiction, but often they cannot enforce their fire codes there.

## Interstate Commerce

Article I, Section 8 of the U.S. Constitution gives Congress the authority to regulate commerce between states. Interstate commerce is considered to be any commercial item that is transported between states, so the congressional authority extends to road transportation, pipelines, trains, airlines and ships. The U.S. Congress has authorized the U.S. Department of Transportation (DOT) to implement regulations that apply to these areas. Furthermore, the DOT's definition of interstate commerce includes items that have been prepared or stored for interstate shipment. The definition thus extends the DOT regulations to places where interstate shipments are stored, such as warehouses, train stations, airports and seaports. In nearly all of these cases, local fire departments must protect property where its fire codes may be pre-empted by the DOT regulations. As will be discussed in a following section, these regulations have a significant impact on state and local fire codes that address hazardous materials.

## Federal Enclaves

The same section of the U.S. Constitution that reserves authority for interstate commerce also gives Congress the authority to exercise governmental control over federal property when it is within a federal enclave. A federal enclave is any land owned by the U.S. government. Military installations are a prime example of a federal enclave, but this can apply to Veterans' Administration hospitals or other federal complexes as well.

The constitutional pre-emption of state or local governmental authority means that states cannot unilaterally enforce building and fire codes in federal enclaves, even when they have the responsibility for extinguishing fires there. The literal definition of an enclave is a **country within a country**, and the U.S. government's use of the word follows the literal definition. Once inside a federal enclave, state and local laws cannot be enforced unless the U.S. government has expressly authorized that power. Consequently, a local code enforcement official cannot routinely exercise his or her police power to inspect property on a federal enclave, nor can he or she force the federal facility to comply with local fire codes.

In 1988, the U.S. Congress enacted legislation that encourages federal enclaves to comply voluntarily with local fire codes. The legislation, a series of amendments to the Public Buildings Act of 1959, stopped short of mandating that federal enclaves must comply with local building and fire codes. But the amendments made it clear that the enclaves should follow local safety regulations unless the persons in charge determined that doing so would threaten national security.

Federal property that is not on a federal enclave is treated differently. Many federal buildings are built on leased land, and many federal agencies lease space from private building owners. These buildings are subject to all of the local regulations that apply to other businesses within the jurisdiction.

## Additional Powers Asserted by the U. S. Government

Since the U.S. Constitution was written, Congress has assumed federal authority in other areas that it deemed to be in the national interest, even though these items were not explicitly noted in the U.S. Constitution. For example, Congress gave the Atomic Energy Commission (now the Nuclear Regulatory Commission (NRC)) the authority to control radioactive materials. The U.S. Department of Defense has its own regulations for the storage and transportation of military ordnance.

The regulations that are enacted by the federal agencies noted above can pre-empt state and local codes. This does not necessarily mean that the latter codes are not enforceable where the federal regulations apply. In a private research lab, for example, the radioactive material used must meet the NRC regulations, but the local fire code can still be applied as long as it is consistent with the federal regulations.

It should be remembered that the Constitution grants most police powers to state governments by exception (i.e., states can enforce any police powers that the Constitution is silent on). This leaves the U.S. Congress and Supreme Court with a lot of latitude to interpret what is or isn't in the purview of the federal government. When opposing parties disagree on an interpretation, the issue can go to court — ultimately the U.S. Supreme Court — for its interpretation on what was intended in the constitution. The Supreme Court's interpretation is binding.

## Federal Regulation of Hazardous Materials

A variety of Federal agencies regulate hazardous materials. The DOT is involved in hazmat regulation because most hazardous materials are commercial items. Also, Congress has considered pollution, spills and waste disposal to be issues of national interest. Consequently, the regulations of several U.S. government agencies contain hazardous material requirements that may conflict with or pre-empt the fire codes of a state or local government.

The U.S. Congress has enacted several hazardous materials laws. The Resource Conservation and Recovery Act of 1976 (RCRA) directed the U.S. Environmental Protection Agency (EPA) to develop standards for treating, storing and disposing of hazardous wastes. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), known as the Superfund Act, and the later Superfund Amendments and Reauthorization Act (SARA) gave the EPA broad authority to require the identification of sites where hazmats are stored or used, collect taxes from the producers to set up a cleanup trust fund, and to regulate the cleanup of all hazardous materials leaks and spills. The Clean Water Act, which regulates hazmat spills in navigable waters, has created regulations in both the EPA and the U.S. Coast Guard.

The Occupational Safety and Health Act created the U.S. Occupational Safety and Health Administration (OSHA) and directed it to regulate workplace environments. Part 1910 of those regulations (29 Code of Federal Regulations (CFR)) defines hazardous materials, regulates workplace exposure limits, and spells out the requirements for emergency response personnel who may become exposed to hazardous materials.

DOT regulations on interstate commerce contain specific sections on packaging, storage and transportation of hazardous materials. The Hazardous Materials Transportation Uniform Safety Act (HMTUSA) directs the DOT to collect fees from hazmat transporters that will be used to train emergency responders in public agencies to handle hazmats.

State and local governments have been significantly affected by these federal laws and the regulations they have spawned. Every code requirement that applies to a physical hazard (explosive, flammable, combustible, unstable, reactive) or health hazard (corrosive, toxic) must consider the related federal regulations that conflict with or pre-empt the code.

For example, DOT regulations published in 49 CFR allow the agency to pre-empt state or local fire codes when it determines that those code requirements interfere with or might delay the interstate movement of goods. An illustration of the DOT's pre-emption power is a case involving the Yellow Freight System, a national trucking company, and the City of San Jose, California. The company appealed to the DOT that certain city fire code requirements for hazardous materials conflicted with DOT regulations. The DOT ruled that the San Jose requirements were inconsistent with the federal regulations and were therefore pre-empted.

The DOT has similar authority over natural gas and petroleum pipelines because they cross state lines. The agency has enacted regulations for the construction and maintenance of these lines that pre-empt state and local governments from additional regulation. Some state governments have elected to enforce these federal regulations, but do so only with the express permission of the DOT.

## **TRANSFERRING GOVERNMENT POWER TO STATE AND LOCAL GOVERNMENTS**

Just as the U.S. Constitution grants governing powers to states, state constitutions can grant this same power to local governments within their boundaries. But the state-local governmental relationship is more complex than the federal-state relationship, especially regarding codes. There are two basic reasons for this. First, individual state constitutions differ in form and scope. The U.S. Constitution does not dictate a particular format for state constitutions, other than the precondition that the form of state government must be republican (i.e., a government where the citizens have the ultimate power). Consequently, state constitutions are free to address the issue of police power any way they choose, and this is reflected in the variety of approaches from state to state.

Along with the differences between state constitutions, the other reason for the complexity lies with how codes evolved within each state. Many states did not address fire safety issues until long after they had achieved statehood, and some states still leave fire safety up to local governments. These states passed on their police power to local jurisdictions indirectly, just as the U.S. Constitution passed it to the states. In those states that did address fire safety at the state level, many had existing local codes that predated the state action.

Delaware, for example, enacted a state fire code long after the state constitution was created. Because some local governments already had their own fire codes, the new state code allowed those jurisdictions to continue enforcing their own fire codes as long as the local code was not less

stringent than the state code. At the state level, then, the methods for granting police power vary from retaining all fire code enforcement authority at the state level to retaining none. When this authority has been granted to local governments, it has been done in a variety of ways. The following section will discuss the primary methods used for doing this.

### **State Options for Transferring Police Power to Local Governments**

State governments have three basic options for giving police power to local governments. The first option is home rule authority, which is a general authority to govern. The second choice is enabling legislation, which grants a specific power (e.g., the authority to adopt and enforce codes). Third, the state legislature can require local governments to enforce certain statutes or codes through mandatory legislation.

In some states, these options will be mixed. Often, a power is enabled or mandated through the regulations enacted by a state agency, which was authorized or mandated to do so by legislation.

For each of the options noted above, the variety of state constitutional approaches has created several variations on how a particular state government might implement them. Some of these variations are described in the following sections.

#### **Home Rule**

In states, the power to govern is transferred from the state government to local government via home rule authority. Home rule is the authority for a local government to conduct its own affairs, such as to enact its own traffic laws. This authority is considered to be broad because normally there are no restrictions placed on it. In some states, this authority is contained in the state constitution; in others, the authority is granted by the state legislature. For example, a state legislature can enact a charter that gives local governments the power to set their own governing rules.

In many states, though, the state has placed different conditions or restrictions on home rule authority. Some states limit home rule authority to cities over a certain population size. Other states might restrict the home rule authority to specific categories of governance, such as law enforcement, reserving other governmental authority to the state, such as the right to tax.

#### **Enabling Legislation**

State governments also can give specific police powers to local governments via statutes rather than granting broader powers via home rule authority. For example, the state of Minnesota enacted a specific statute that created a state fire code and authorized local governments to adopt it for their use. The statute also allows jurisdictions to adopt a different fire code as long as it is as stringent as the state fire code. Although enabling legislation is specific to a particular purpose (such as the authority to enact a fire code) like a charter, it is not mandatory. Enabling legislation gives the

local government the option to enforce the power that is authorized in the legislation, and each local government must take an action to implement the power. In the Minnesota example, local governments can decide to let the state fire marshal handle all fire code enforcement for them. Alternatively, they can adopt the state fire code as their own or adopt another one that is at least as stringent as the state's.

It should be noted that when a state uses enabling legislation to authorize local fire codes, it is normally still necessary for each local government to formally adopt its fire code through a local ordinance. Using the Minnesota example, if a local government did not pass an ordinance that adopts either the state fire code or its own, the local fire official could not use his or her municipal court system to prosecute code violators. Instead, he or she would have to refer the violation to the state attorney general who could file a complaint in a state district court. By formally adopting a fire code ordinance, the local government can use its own court system to prosecute code violators, a much more efficient method.

Another method of using enabling legislation is to combine it with a set of regulations. A regulation is a government order that has the force of law. Regulations differ from statutes in that they are created by a state agency at the legislature's behest. The legislature does this by enacting a statute that enables a particular state agency to create specific regulations on a subject (e.g., fire safety regulations). In addition, the legislature may include language in the enabling legislation that gives the state agency authority to pass its police power to local fire officials so they can enforce the state regulations.

### Mandatory Legislation or Regulations

State governments can also mandate that local governments enact codes or regulations. Like enabling legislation, the mandate can originate with a statute or it can be traced to a mandatory regulation that a state agency enacted at the direction of the legislature. Again, the specific method depends upon the constitutional framework and the regulatory history in each state.

### Methods for Adopting Building and Fire Codes

Governments have two methods of adopting a model code. The first is **transcription**, where the government enacts a regulation that literally copies the entire model code into the regulation and places the jurisdiction's title on it in place of the model code title. The other method is to adopt the model code by **reference**. With the reference method, the jurisdiction adopts a short regulation stating that the model code in question is legally enforceable as the jurisdiction's fire safety regulations. Jurisdictions using the transcription method must print copies of the code for people to use.

The reference method is more popular because the code books are available from the model code organizations. Another reason for the popularity of the reference method of adoption is its efficiency. Some states add amendments to the model code, for example the deletion of a specific chapter or the addition of more stringent requirements. But for the most part, the model fire codes

provide a complete set of fire safety requirements that will apply to situations found in every jurisdiction. The model codes have two other distinct advantages. They have a broad base of support (i.e., dozens of states, and the large number of adopting jurisdictions increase the confidence that the codes in question are reasonable). Also, the model code organizations publish revised editions; this provides for regular improvements to existing requirements, as well as the timely adoption of requirements that apply to new materials or processes. If each state were to create its own agency to perform this regular updating and introduction of new topics, it would create a great deal of redundant actions that would not have the broader base of support afforded by the model codes.

Although the model code option is the most frequently used of the options noted, states still have additional statutes or regulations regarding fire safety. The statutes might address an issue that is peculiar to the state and not adequately dealt with in the model code. Or, a statute might enact more stringent measures on a specific fire safety issue than are found in the model codes. Two examples are sprinkler requirements and the definition of a high-rise building. Many states have enacted statutes or regulations that require sprinklers in certain occupancies that are not required in the model codes. Some of these sprinkler requirements are retroactive, where the model code requirements are not unilaterally retroactive. Also, some states have amended the definition of high-rise buildings in the model codes by lowering the building heights that define high-rise buildings, thus applying their model code's high-rise fire protection requirements to more buildings. For example, the state of Michigan defines a high-rise building as one greater than 40 feet in height. Thus, a building taller than 40 feet would require the same fire protection features that are called for in the two model codes used in Michigan, even though one of the model codes uses 75 feet to define high-rises and the other uses 55 feet.

### **Mini and Mini-Max Codes**

States that adopt a statewide fire code do not necessarily make it the exclusive fire code for their local governments. Where this is the case, local governments can elect to use the state fire code or enact their own. But some states add a provision to their adopting language that prohibits local governments from adopting fire codes that are less stringent than the state code. In states where this is the case, the state fire code is called a mini code.

A number of states go further than the mini limitation and add a maxi limitation as well. This limitation can take two forms. The limitation may state that local fire codes cannot be more restrictive, or the language provision can state that local jurisdictions cannot adopt regulations that differ from the state code. Both forms of the limitation will effectively make the state code both the minimum and maximum fire safety requirements, since another fire code could only be different by containing requirements that were less restrictive or more restrictive than the state fire code. Where this type of limiting provision is used, the code is called a mini-max code.

The mini-max concept is a little difficult to explain because it is not an explicit feature of a code. Rather, a code becomes a de facto mini-max when certain restrictions are placed upon the jurisdictions using the code. To make a code a mini-max, the jurisdiction does not state that "this is a mini-max code." Rather, the jurisdiction states something like "No one in this state may adopt

a fire code, ordinance or regulation that differs from this code.” This type of statement makes the adopted code a mini-max because no one can adopt anything either less stringent or more stringent than what is in the adopted code.

Local sprinkler requirements are an example of these limitations. If the state mini-max code says that sprinklers are not required in retail occupancies unless the occupancy is larger than 12,000 square feet, a local jurisdiction could not enact an ordinance that requires sprinklers in these buildings over 10,000 square feet. This ordinance would be more stringent than the state code. Thus it would differ from the state code and be illegal. The same goes for an ordinance that might be less restrictive than a state code requirement.

## **CODES AND STANDARDS**

### **Codes**

Codes are mandatory provisions using the word **shall** to indicate requirements and are in a form generally suitable for adoption into law. They set forth minimum requirements to protect the health and safety of society and generally represent a compromise between optimum safety and economic feasibility. Codes are written in legally adapted language and are intended to be adopted by the authority having jurisdiction (AHJ) into the local or state statutes. There are two types of codes:

- Prescription (formally called Specification) — Spell out in detail what materials can be used, the size of components and how they are to be assembled.
- Performance — Detail the objective to be met and establish criteria for determining if the objective has been met.

### **Standards**

Methods and materials can be selected as long as it can be shown that the performance criteria can be met. Performance-oriented codes still embody a fair amount of specification-type requirements but the provision exists for substitution of alternate methods and materials if they can be proven adequate “trade-offs.” Standards are mandatory provisions using the word **shall** to indicate requirements. Requirements found in codes are excerpts from, or based on, the standards published by nationally recognized organizations. The most extensive use of standards is their adoption into the code by reference, thus keeping the code to a workable size and eliminating duplication of effort. Examples of such standards are those that deal with:

- Extinguishing systems.
- Flammable liquids.
- Hazardous processes.
- Combustible dusts.
- Building materials.
- Water systems.

- Mechanical systems, etc.

It should be noted that there are a number of NFPA documents which carry the name “code” but are enforced as “standards.” These include the NFPA 72, *National Fire Alarm and Signaling Code*, NFPA 70, *National Electrical Code*<sup>®</sup>, and NFPA 30 *Flammable and Combustible Liquids Code*.

### **Recommended Practices**

Recommended practices are only advisory provisions (using the word “should” to indicate recommendations) in the body of the text. Should indicates a recommendation which is advised but not required. They are published by nationally recognized organizations and are intended to deal with maintenance and operational standards for the various systems required by the code. Recommended practices can be adopted into the code by reference and used by the AHJ as guidance in a particular situation or the provisions of a recommended practice can also become mandatory, essentially changing the “should” to “shall.” As an example, your local adoption states that the protection of buildings from exterior fire exposure shall be in accordance with NFPA 80A, *Recommended Practice for Protection of Buildings from Exterior Fire Exposures*.

### **Guides**

Guides are advisory in nature and may give instructions, but do not contain mandatory provisions. They are written by nationally recognized organizations. Guides are intended to explain the codes’ and standards’ written intent. Guides provide methods to the AHJ or testing agencies to assess the degree to which the system has met the intent of the standard.

Guides are not adopted by reference, but can be included in a standard. Guides can also be considered to the “standard of care” for a particular activity or process.

### **Nationally Recognized Standards**

All of the code documents require certain types of construction methods, materials and equipment. In most jurisdictions, “approved” means “acceptable to the AHJ.” Most code enforcement officials do not have the facilities or expertise to conduct the testing necessary to assure that the construction methods, materials and equipment meet the code requirements. Instead they rely upon outside testing and listing organizations. There are numerous testing and listing laboratories in the United States. Three of the most well known are Underwriters Laboratories (UL), Factory Mutual Research Corporation (FM), and Southwest Research Institute.

Also mentioned in the model codes are testing criteria or standards. Some of these standards may be from UL or FM. Others come from additional standards organizations.

The American Society for Testing and Materials (ASTM) has more than 140 standards writing committees and produces voluntary consensus standards for materials, products, systems and

services. The standards written by ASTM are consensus standards, developed by ASTM committees, and are subject to approval by the membership. Quite often, ASTM, UL and NFPA will have identical standards criteria.

The American National Standards Institute (ANSI) writes no standards of its own, but approves standards written by other organizations. One of the criteria for this approval is that the standards be developed under an open process that gives directly and indirectly affected interests an opportunity to express their views.

The American Petroleum Institute (API) represents those individuals and companies involved in the petroleum industry. The institute writes several standards concerning the storage and handling of flammable and combustible liquids.

### **Code Reference Materials**

It is essential that adequate copies of the adopted codes, by edition, be available for use by all inspection personnel. Copies of other standards, by edition, that are referenced by the codes must also be available.

### **Authority Having Jurisdiction/Code Official**

In most jurisdictions, there are individuals designated as the one legally responsible for enforcing the provisions of the building and fire codes. These persons are referred to as the AHJ or the code official.

The code official (AHJ) is the administrator and the code enforcement officer who is responsible for:

- Applying and enforcing code requirements.
- Conducting the necessary inspection to determine code compliance.
- Determining alternate methods of satisfying the intent of the code.

### **Plan Submittal and Review Process**

According to the provisions of the building and fire codes, plans and specifications are required to be submitted with each permit application. These documents are required to be prepared by a “registered design professional” if required by local and state laws. Where special conditions exist, the code official may require additional construction documents to be prepared by the design professional.

The codes also give the code official the authority to waive the submission of the construction documents when it is determined that a review of construction documents is not necessary to obtain compliance with the code due to the nature of the proposed work.

Code officials should also be familiar with the provisions of their individual state's architectural, design, and engineering registration and licensing laws as many of these contain provisions detailing when the services of a design professional must be utilized. These laws also generally prohibit a code official from approving any project for which the services of a design professional are required but are not used.

The code official may require more than one set of plans and specifications to be submitted. Documents may be submitted in an "electronic media" when permitted by the code official. The general practice on plan review seems to be that paper copies are submitted for review and electronic media is used for long-term storage/archives.

Fire protection shop drawings are required to be submitted to the appropriate code official prior to beginning any system installation. These documents are required to contain all information required by fire code and the appropriate NFPA documents.

Addendums and change orders also are required to be submitted to the code official for review.

The codes allow phased approval, or what is commonly called "fast track." This process is subject to the code official's approval. Adequate information must be provided for each "phase" under consideration, and the permit holder proceeds at his or her own risk, without any assurance that the permit for the next phase or the entire structure will be granted.

The code official is authorized to permit "deferred submittal." This often occurs when fire protection system plans are not included with the original construction submittals. Any items subject to deferred submittal may not be installed until appropriate construction documents have been submitted, reviewed and approved by the code official.

The code official is required to examine or have construction documents reviewed by a qualified person. When any code official reviews construction documents and issues a permit, the construction documents must be marked with the phrase "Reviewed for Code Compliance." One set of reviewed documents is to be kept by the code official and the other set returned to the applicant.

## **PERMITS**

Permits normally bring about code enforcement. A permit may be required to conduct a specified business or operation. The lack of a permit constitutes a violation of the fire code and the project/process can be shut down. Know how establishing a permit program might conflict with other agencies, departments, or divisions.

This permit system is a method of dealing with and controlling hazardous conditions and operations. The permit requires that recognized practice, as laid down in technical sections of the codes or standards, be complied with. In this way, the code enforcement agency gains control or limits hazardous activities (welding, spray painting, etc.).

The purpose of a permit is to require that fire hazards be brought to the attention of the bureau so that an inspection can be made to ensure compliance with code requirements. This permission shall not be construed as a right to violate any provisions of the code.

Many local communities have established fees for the permits that are issued. These charges should be in an amount that offsets the cost of the community for the time and resources required to approve the permit.

## **COMPLIANCE**

Within the purpose, scope or enforcement authority of the building or fire codes, is the word “compliance” mentioned? We assume that if we do not note any violations of the code, then the building is in compliance with the code. The word compliance means the act of conforming, or being in accordance with. Your duty as an inspector is to inspect for the purpose of ascertaining and correcting conditions that are in violation of the code provisions or the intent of the code. If you state that a building is in compliance with the code, what does that mean? Is the building 100 percent, 90 percent or 50 percent in compliance? You really have no way of determining compliance unless you were involved in the site inspection of the building during all phases of construction.

An example of this would be if you are inspecting an existing restaurant that has a fixed ceiling in place around a grease exhaust duct. How would you know if the required clearances between the duct and combustible construction have been provided when there is no attic space that would provide access? This condition could only have been determined during the construction and installation of the duct itself. Would it be reasonable to require that the ceiling around the duct be removed to determine if the clearance had been provided?

Your duty as an inspector is to determine if the building, conditions, or process meets or is in accordance with the intent of the code requirements. To do this, the inspector has to have an understanding of what the code requirements are intended to accomplish (i.e., “whys” of the code, not just the written word). Getting violations corrected can be accomplished when the “whys” of the code can be explained. Knowing the “whys” or the intent of a given requirement will enable the inspector or the AHJ to determine if an alternate method or material could be used that would meet the intent of the code.

## **DOCUMENTATION**

It is the responsibility of the inspector to have all of the hazards, no matter how small, corrected. All such hazards should be documented for the inspector’s report to provide a complete record of all conditions found.

If violations are not documented, the department may be charged with negligence if a fire should occur and no records have been made of the request for abatement of a violation.

Reports are an important element in the operational procedure of an effective code program. The ability to enforce the code properly, to apply the code uniformly to all parties, and to defend successfully all enforcement actions centers on a good recordkeeping system. Accurate records of violations may act as indicators for the enforcement program. When records are evaluated properly, they may show trends and provide you with the basis upon which your enforcement program can be adjusted to meet the changing requirements. By accurately documenting violations, a chronological listing of previous inspections can be used.

Code enforcement documentation can be in several forms. In addition to inspections being conducted and violations noting required corrective actions, documentation is also required for:

- Detailed building and occupant information.
- Permits issued.
- Complaints.
- Consultations.
- Plan review comments.
- Acceptance testing of fire protection equipment and systems.
- Approval based on alternate equivalent methods, based on intent of code.

Most documentation by an inspector will be related to inspections, reinspections, violations noted, corrective actions required, and violations corrected or removed. This documentation will be in a written format that uses either preprinted forms or written inspection reports. When writing an inspection report, remember that legal actions are often won or lost on the basis of the written reports and records.

When writing a report, keep in mind that:

- Reports that are based on conjecture or derived from uncertain and questionable sources must not be used.
- Acceptable grammar should be used.
- A well-prepared report indicates that the inspector has the knowledge and has developed the experience to conduct a valid inspection and present it in an acceptable form.

Each violation listed on the report must:

- Describe in detail the specific violation noted.
- State what the code would require, and describe the corrective action that has to take place in order to meet the code requirements.
- Provide the code references, including the edition, and sections numbered.

Remember that the accuracy of the report cannot be overemphasized. It is a legal document and may be used by several different legal representatives. Code enforcement officials who write

inaccurate, sloppy or incomplete reports may leave themselves, their departments or their city open to possible legal ramifications.

## **THE APPEALS PROCESS**

The purpose of the appeals board is to answer questions of interpretation and application, as well as to evaluate equivalencies. It is not the purpose of the appeals board to waive code requirements.

The board shall adopt reasonable rules and regulations for conducting its hearings. All proceedings shall become public record. The board may also require a fee for this hearing. The board should consist of members who are qualified to rule on matters pertaining to fire protection and fire prevention.

The city or county attorney also should be an ex officio member to address legal matters or potential conflicts of interest. The members should address incorrect or unreasonable decisions, and grant variances from strict interpretations of law which would result in undue hardship.

The inspector must be aware that his or her administratively issued notices of violations or corrections may be appealed through the appeals process established in the adopted fire codes. Usually notices of corrections that involve an emergency condition are not subject to appeal.

## **Code Official/AHJ**

In most cities or states, the code official/AHJ will have formal and informal hearings (on the record, off the record hearings).

The informal hearing is a nonrecord proceeding in which the property owner may request a hearing to determine if a solution can be worked out without going to the board of appeals or to court. The property owner may submit documents in an attempt to correct the deficiencies or to submit equivalencies that would meet the intent of the code.

The formal hearing is a record proceeding. It uses many of the same legal techniques involved in any court hearing.

- Testimony under oath.
- Subpoenas.
- Transcripts.
- Affidavits.
- Cross examinations.

Again, as in the informal hearing, the property owner/business owner still may wish to go to the board of appeals or to court.

## **INTERGOVERNMENTAL AND INTERAGENCY CONFLICTS**

### **Overview**

Public agencies that enforce public safety regulations can rarely escape the influence of other public agencies. Statutes, regulations and ordinances that address public safety or welfare issues often overlap or conflict. The conflict can be intergovernmental, such as federal-state or state-local, or it can be interagency within the different levels of government. An example of the former would be overlapping requirements for an interstate warehouse between the DOT and a state fire code. The DOT can preempt any local code requirement that it construes to interfere with interstate commerce.

An example of the latter would be the conflict between a local building and fire code on the issue of double-deadbolt locks for residential occupancies. The fire codes approach this as a life safety issue because double-deadbolt locks pose a higher risk to occupants. These locks need a key to be opened from the inside, and reports are not uncommon of people trapped because they couldn't find the key. Supporters of these locks may approach the issue as a security issue and want the building codes to permit them.

### **Jurisdictional Context**

When these inevitable conflicts occur, the code enforcement official needs to consider the jurisdictional context in which his or her fire code is related to the other code. The jurisdictional context describes the relative legal power of the agency to resolve the conflict and also suggests the best method of resolution. The power relationship in this context can be one of three types.

#### **Authoritative Power Relationships**

Looking at the three power relationships from the point of view of the fire department, the power relationship is authoritative if the fire department can pre-empt the regulations of the other agency. When the power relationship is authoritative, the code enforcement official is in a legally superior position and can mandate that the other regulation not be enforced. However, it may be more feasible to explore other options for resolving the dispute before exerting this authority. This option would normally be the last one chosen if things cannot be resolved cooperatively.

#### **Cooperative Power Relationships**

When the fire department's power is equal to that of another agency, then the power relationship is cooperative. In a cooperative power relationship, conflict must be resolved through negotiation. When negotiating, it is important to stress the intent of the fire code requirement in question. Even if the two agencies are equal in power, the safety objective of the fire code requirement might give it more merit than the conflicting code or regulation.

## Subordinate Power Relationships

When the other agency can pre-empt the fire department, then the fire department has a subordinate power relationship with that agency. To deal with a conflict situation in a subordinate power relationship, the code enforcement official is dealing from a position of inferiority. But this does not mean that the conflict cannot be resolved in favor of the fire code, if the code enforcement official can demonstrate that the fire code won't harm the spirit or intent of the other agency's requirement, even though it won't meet the letter of the conflicting requirement. It provides a framework for the other agency to accede to the fire code enforcement official.

## Suggestions for Resolving Intergovernmental Conflict

Many jurisdictions anticipate the possibility of conflicting regulations and add a provision to their statutes that, when two regulations conflict, the more stringent applies. This provision works fine when the conflicting requirements serve the same purpose, but this not always the case. For example, if the conflict is between an occupational safety requirement for a 2:A, 10B:C portable extinguisher and a fire code requirement for a 4:A, 10B:C extinguisher, the latter is clearly more restrictive and therefore would prevail. But what if the two conflicting requirements don't serve the same purpose, or perhaps serve opposite purposes? Take the example of a building security requirement for double-deadbolt locks versus a fire code requirement prohibiting them. In this illustration, the conflict cannot be resolved by selecting the more stringent of the two. So, the provision noted above won't automatically resolve all potential conflicts.

Another means of resolving these conflicts is the use of a formal appeals process. An appeals process refers a conflict, normally one between the enforcing agency and the public, to an appeals board, which can render a binding opinion to the conflicting parties. While appeals boards are typically formed to resolve conflicts between the code enforcement agency and the public, jurisdictions can extend the power of the appeals board to handle interdepartmental conflicts. The merit of this type of conflict resolution is that it allows for conflicts to be resolved without going to the next legal step, which is a court of law. The differences are twofold. First, the appeals process puts the decision in the hands of people who are familiar with codes whereas going to court puts it in the hands of a judge who may not understand codes. Second, a court ruling can set a legal precedent that can affect all future code enforcement activity.

Creating an appeals board can be fairly simple, since each of the four model codes contains a section on appeals boards and the appeals process. If a jurisdiction prefers the language in its model code, it can select members for the board per the code. If a different method of organizing the board is preferred, then the jurisdiction can either amend the model code language or delete the entire section and replace it with the preferred requirements.

The scope of the appeals process can be expanded to resolve interagency conflicts. For example, it is not unusual for a board of appeals for fire codes to be comprised of both building and fire code officials. This board, then, could be appropriate for resolving a conflict between the building and fire code.

There are four general guidelines to follow when choosing a strategy for resolving conflicts between your fire code and other codes, statutes, regulations or ordinances.

- Choose your battles. Not all conflicts are winnable. Look at the case from the perspective of the other agency and ask yourself how solid their argument is. On the other hand, your odds of winning are lessened when your position is not legally solid or when it is based on judgment rather than explicit requirements. An illustration of the first suggestion — choose your battles — is a dispute between the code enforcement official and the state board of education over who must review school building plans. If the board's authority rests in a statute and the fire official's authority rests on a regulation based upon enabling legislation from the state fire marshal, the state might consider the statute as superior. It would be wise to check for precedents to predict how the dispute might come out in case your negotiations fail and the board forces the issue.
- Think the problem through to consider all of the possible alternatives and outcomes. This will accomplish two things. First, it might reveal some middle ground that hadn't been considered. Second, it might reveal some allies you hadn't considered to help you. For the second suggestion — consider all possible alternatives — look at the situation from both sides in order to better understand where the opponent is coming from. This can help overcome ideological barriers that might be preventing you from considering a solution that would be acceptable to both sides.
- Consider the possibility that you might lose more than you bargained for. One impact of losing is that the same decision will be applied to all future cases, so you must decide if it is worth the risk of a negative outcome. In other words, would it have been better to live to fight again? The third suggestion — consider the consequences if you lose — is very important. An illustration is a conflict between the fire and building officials over who should review the egress components on a building plan. Assume that the conflict goes to the city manager, and he or she decides to resolve it by giving all plan review authority to the building official. Keep the potential negative consequences in mind when deciding when you are to force an interagency conflict.
- Finally, remember that the objective of resolving a conflict is to reach your goal, which is a reasonable level of fire safety for your citizens. Don't let things like principle and personal bias get in the way. The fourth suggestion — remember the real objective — is included because it is easy to lose sight of the bottom line (what's best for the citizenry) when personal power is being threatened and personal feelings are aroused. If both sides keep this in mind, they are more likely to resolve the dispute cooperatively, since the public good is the objective for each of them.

## **SOURCES OF POTENTIAL CONFLICT**

The jurisdictional contexts described above can be used to analyze the power relationships between and within all levels of government. The section on U.S. governmental powers discussed the potential sources of conflict that can occur between the U.S. government and state or local

government agencies. This section will describe the range of state and local agencies that you might deal with in resolving conflicts with your fire code.

### **State Fire Marshal**

In those states that have state fire marshals (48 of the 50 States), jurisdictional contexts with both authoritative and cooperative power relationships will be found between the state fire marshal and local fire officials. In the state of New Jersey, for example, the power relationship is authoritative. New Jersey has a statewide fire code that is mandatory for all local governments. Local code enforcement officials can enforce the fire code as deputy state fire marshals, which gives the state fire marshal total control over all fire code enforcement activity.

Another type of relationship is found in the state of Minnesota where the jurisdictional context is a blend of the authoritative and cooperative power relationships. This is because the Minnesota state legislature gave the state fire marshal statewide enforcement powers for specific fire code items while leaving local code enforcement officials with their own enforcement authority. In 1975, Minnesota enacted a mini state fire code. The state fire marshal has the authority to enforce the state fire code in any jurisdiction, but the mini code authorizes local governments to enact their own fire codes as long as they are not less stringent than the state fire code. The cooperative power relationship arises because the state fire marshal adopted the practice of enforcing the state fire code in unincorporated areas of the state where a local official has not taken that responsibility.

Another aspect of the state fire code, however, introduced a potential for conflict between the state fire marshal and local code enforcement officials. Part of the state fire code is a statute that requires the state fire marshal to inspect all schools and health care occupancies in the state, and the statute does not provide for situations where there is a local code enforcement official enforcing a local fire code. The state fire marshal/local code enforcement official power relationship is cooperative regarding this overlap in that the state fire marshal has opted to confer with local officials to resolve conflicting orders or interpretations, but the state legislature also gave the state fire marshal some specific authority that can change the power relationship to authoritative.

The state legislature enacted another statute that allows an appellant in the local fire code appeals process to continue the appeal to the state fire marshal if the appellant feels that the local appeals board erred in its interpretation of the fire code. The statute states that appellants can appeal a local fire official's orders to the state fire marshal, who can overrule the local fire official if he or she determines that the local appeals board did, in fact, misinterpret the code. Unlike the New Jersey state fire marshal, whose power relationship with local code enforcement officials is authoritative, the power relationship between the Minnesota state fire marshal and local code enforcement officials is cooperative, only until an appeal is filed. Then the context is authoritative.

## **Building Code Agencies**

Building codes often conflict or overlap with fire codes because a large percentage of building codes are related to fire safety. The conflicts can be state building code versus state fire code agency, state building code versus local fire code agency, or local building code versus local fire code agency. The model code organizations have attempted to reduce the potential for conflict by placing all construction requirements for new buildings in the building codes and by making the model fire codes maintenance documents. But many construction requirements remain in the fire codes, so a lot of potential conflict still remains.

From state to state, the jurisdictional context between building and fire code agencies reveals all three power relationships. Some state governments have statutorily placed the building code above the fire code, the state of Oregon being an example. In this case, the building code/fire code power relationship is authoritative. Other jurisdictions have addressed the conflict issue administratively by placing fire code enforcement personnel under the building official or vice versa. In many states, the agencies have equal authority, and the power relationship is cooperative.

## **Occupational Safety and Health Agencies**

The Federal government enforces national regulations for workers' occupational safety and health through the OSHA. Some states have chosen the option of enforcing the program themselves instead of relying on OSHA. Parts of the regulations address fire safety items, one example being requirements for portable fire extinguishers. The fire safety items in the OSHA regulations overlap with state or local governments, which enforce fire codes. The federal OSHA regulations do not explicitly pre-empt state or local fire safety regulations, so the power relationships between the local code enforcement official and state or federal OSHA agencies may not be clear.

## **Elevator Safety Agencies**

The elevator safety regulations that are adopted by state or local governments are another potential source of conflict with fire codes. The elevator regulations try to keep water out of elevator shafts and machinery rooms as a safety measure; leaking water can affect the braking mechanisms of the elevator cars. In some cases, the elevator codes have prohibited sprinkler heads and piping in elevator shafts, and this prohibition will conflict with the fire or building codes if they require that the building in question be fully sprinklered.

## **Environmental Health Agencies**

Environmental health regulations address public sanitation issues, and these can often be a source of overlap or conflict with fire codes. One example is the conflict between health and fire codes regarding ventilation. Building and fire codes normally require that corridor doors have a minimum fire resistance rating of 20 minutes. But an environmental health inspector might order a building owner to install louvers in a corridor door because it is a janitor's closet and must be

ventilated. Another example is exposed sprinkler piping in a commercial kitchen. The environmental health code might require that the piping be replaced with chromed piping so it can be sanitized effectively. The location of automatic shutoffs for gas appliances can become an issue because they can be placed in areas which make them difficult to keep clean.

### Social Welfare Agencies

Regulatory agencies that license day care or residential living occupancies for disabled individuals may adopt their own safety requirements as part of the licensing criteria. While some agencies might simply require compliance with the jurisdiction's fire code as a condition of licensing, other agencies might enact less stringent requirements because fire safety issues are not the primary focus of the social welfare agencies that license these occupancies. Another potential conflict is the possibility that these agencies will define the licensed occupancies as residential when the building and fire codes define them as institutional.

### Health Care Licensing Agencies

Health care facilities must typically meet state licensing requirements in order to operate and qualify for state medical welfare (Medicaid) payments. Most hospitals also seek accreditation by the Joint Commission for the Accreditation of Hospitals (JCAH). The state licensing requirements and the JCAH accreditation criteria include fire safety regulations. These regulations, often NFPA Standard 101, *The Life Safety Code*, may conflict with or overlap the model fire code provisions adopted by the state or local jurisdiction.

### Law Enforcement Agencies

The fire code may conflict with the security requirements at penal facilities. Law enforcement agencies may promote residential security measures that can conflict with fire codes. Two examples are double-deadbolt locks and window bars.

### State Highway/Transportation Departments

Although a local fire department may be responsible for suppressing fires and handling other emergencies on state roads, it may not have unilateral authority there. Enforcement of fire code requirements for water supply, fire hydrant access, and combustible vegetation may conflict with or be pre-empted by state DOT regulations.

### State Departments of Education

Many state governments have created a separate state agency to oversee additional issues in the state; these agencies often are empowered to draft and review the plans for all school buildings. In

these cases, it is not unusual for the state education agency to preclude other agencies from reviewing its plans and inspecting the building construction. The school construction regulations might ignore certain building or fire code requirements, or the agency might have the authority to pre-empt local codes.

### Land Use and Zoning Agencies

Land use ordinances may contain requirements for access, building setbacks and landscaping that interfere with fire lane and hydrant location requirements in the fire code. Zoning regulations may overlook the need to sufficiently separate hazardous facilities from high-risk occupancies, thus reducing the effectiveness of the jurisdiction's fire code.

Zoning regulations may also authorize certain occupancies that conflict with the fire code. An example is the use of single-family homes for supervised residential facilities housing groups of handicapped people. If the zoning agency/fire department power relationship is authoritative, then the fire department may have no choice but to accept the situation. In some of these circumstances, fire departments have convinced the zoning agencies to require fire alarm systems or sprinklers to approve homes used in this manner.

### Hazardous Materials Regulatory Agencies

A variety of state and local government agencies are involved in controlling hazardous materials. Because each state government is organized differently and has a different history of creating administrative agencies, there is no logical method of determining by the title of the agency just which agencies in a state are involved in hazardous materials regulation. Where one state might have a waste management agency to enforce hazardous materials disposal requirements, another state might give this responsibility to the health department. The state police in one state might be responsible for hazardous materials evacuation planning, while a neighboring state might create a separate emergency preparedness agency for this purpose.

Many of these state agencies act as agents of the federal government. For example, the SARA authorized the EPA to require community planning and right-to-know programs. The act requires that state governments develop emergency response plans and create Local Emergency Planning Committees (LEPCs) to develop them, as well as to establish right-to-know guidelines for the community. As noted above, a state might create a new agency to take that responsibility, or it might assign the responsibility to an existing agency, such as the state police or the state fire marshal. State environmental protection agencies monitor manufacturing and disposal sites to enforce federal clean air regulations. Again, they may be stand-alone agencies such as a state EPA, but the state health agency might also play this role. Each state has a department of transportation, and it might adopt regulations to enforce federal DOT regulations.

Waste management agencies also are involved with regulating hazardous materials, including byproducts of a manufacturing process, medical waste and other hazardous materials that might be discarded along with regular waste. These agencies might set up recycling centers, which

accumulate and store flammable, combustible and otherwise hazardous materials where the original material is no longer identifiable.

## **MAINTAINING A LIBRARY SYSTEM**

### **Identify and Select Priorities**

It is vital that a code enforcement agency establish its own library. While the training bureau may have an excellent collection of training and research manuals, very few have the material that is necessary for proper code enforcement or for researching the various needs of the agency.

### **Code, Standards, Local Ordinances**

First on the priority list should be all of the old code editions, local ordinances and standards that were adopted by the local political body. These documents are necessary for research when an inspection has been conducted and violations have been found. With these codes and standards, a review can verify if the building was built according to the code that was in effect at the time of construction. New codes have provisions addressing existing buildings at the time of adoption of the latest edition of the code. The building may have continuous use or occupancy continued if it was legal at the time of construction or the continued use is not a danger to life or safety.

Over the years, various changes in the building codes have required the inspection bureau to do a record and code check of existing buildings to verify that their use and occupancy are in compliance. In many cases, when there is a fire or other emergency, the first things investigators and attorneys look at are the codes, standards and regulations that were in effect at the time of construction. If remodeling was done, did the repairs or alterations made at the time the work began meet the requirements for the construction (not necessarily the entire code)? Why wasn't the building required to conform to the requirements of any new construction codes that were in existence at that time of alterations?

The current editions of the codes and ordinances should also be a part of the library. These should be in addition to the copies assigned to the code enforcement officials or the plans reviewers. The library copies are for reference only. Out-of-state companies or developers usually ask to review the local codes and ordinances (in many cases prior to a preconstruction meeting) to verify they are aware of all local requirements.

### **Books and Journals**

Among the books available to code enforcement officials is the NFPA "Fire Protection Handbook." This particular book is now in its 17th edition; it is updated approximately every five years. The book is a resource on fire protection and fire prevention practices. Other NFPA handbooks include the "National Electrical Code Handbook," "Automatic Sprinkler Handbook," "Fire Alarm Signaling System Handbook," "Health Care Facilities," "Fuel Gas Code," and the

“Uniform Building Code Handbook,” which are designed to explain code requirements and help users apply them intelligently. These books are guides; they are not intended to replace the codes.

Many journals and magazines are useful for bureaus in developing their programs, code enforcement techniques, and code interpretations. The model building groups’ publications are excellent resources for finding interpretations of both building and fire codes. These magazines should be filed chronologically and bound by the year for future reference.

### Publications of Standards or Regulations

Code enforcement agencies need to be aware of the standards published by the ASTM, the API, and the ANSI. The ASTM develops and publishes standards for materials and standard tests of materials and assemblies. The ASTM standards, usually issued as tentative, are required to be reviewed periodically to determine if they should be made a standard. The API issues standards for storage and handling of flammable and combustible materials, tank construction and installation.

Also very important to every code enforcement official and all plans review personnel is the recent Americans with Disabilities Act (ADA). This law affects the accessibility of buildings for handicapped people. Code enforcement officials should be aware of the provisions of the ADA when examining buildings for the ease of evacuation or of defending in place (compartmentation, an area of rescue assistance, etc.).

The ANSI has two methods of establishing standards. The first is “existing standards” where the method is adopted by the ANSI but the standard has been produced previously by another company. The second is “sectional committee” where the ANSI acts as a correlating agency to determine “need” for a new standard, as there are “existing standards.” Representatives of all agencies, or individuals who have an interest in developing a new standard, confer. When a consensus is reached, a special committee is formed to write the standard. The ANSI publishes numerous standards, but two used frequently address handicap provisions and elevator requirements. These work hand-in-hand with the building and fire codes.

Product manufacturers publish listings of materials and products that meet the various standards. These lists are excellent references for architects and engineers specifying a particular type of product. Some agencies require cut sheets, videos and pictures, and require that slides be submitted. These become part of the research section of the library.

Among the books that testing laboratories and manufacturers will supply to fire departments are “U.L. Fire Resistance Directory,” “Intertek Listing Book,” “The Gypsum Products Fire Resistance Design Manual,” and “Factory Mutual.” Of course there are many others. As you build your reference library, you will want to add any that are relevant to your department. One key point is not to “over collect.” Get the ones you will use most in the plans review and inspection sections, then proceed from that point.

## **Reference Materials and Books on Hazards**

Hazardous materials reference books are another vital part of the fire prevention bureau library. With the ever-increasing number of chemicals, it has become necessary to have books on hand to do the research necessary to conduct a thorough inspection. Departments must select books that will most benefit them. Some of the first books to review are the “Chemical Dictionary,” “Flammable and Combustible Liquid Code,” “DOT Handbook Guide,” and books on the handling, storing and manufacturing of hazardous materials. Also include copies of proposed code changes, which are an excellent tool for researching interpretations when questions arise as to the intent of the code.

## **Necessary Interpersonal Skills**

The inspector’s ability to enforce the code within their community will depend greatly on interpersonal skills. These skills will be enhanced greatly if the inspector has the ability to explain the intent of what is being required rather than stating that it is required by the code. Remember, for effective communication to take place, the receiver must be able to fully understand the sender’s message. You, as the inspector, can be either the sender or the receiver. The ability to communicate is a personal skill that is essential for effective code enforcement.

## **Fire Safety Salesperson**

Being able to sell fire safety is essential. Without this, a good code enforcement program will fail. Using the media to accomplish this is necessary. Sometimes bad press can be used to show the necessity for code enforcement. After a major fire, use the media to explain the reasons behind the fire’s spread, the combustible materials, the large unprotected areas, the open vertical shafts, or that fire protection equipment was not maintained. Unfortunately, a disaster is an excellent opportunity for the fire department to make recommendations for improvements in the community and to show the relevance of code enforcement.

## **Barriers to Effective Communications**

Effective communication also involves the inspector’s ability to deal with the general public. The inspector must recognize that there are many barriers to effective communication. These barriers can lead to misunderstanding. The inspector must recognize and overcome these barriers. Some of these barriers are:

- Mannerisms in speaking and responding that turn people off.
- Attitudes, behavior, and assumptions that allow misunderstanding and undermine our ability to deal effectively with others.
- Not showing respect for those who differ with us and those who may know less than we do.

## Improving Communication

Building improved communications can be accomplished by:

- Building your self-esteem.
- Building your self-confidence.
- Helping a person to save face.
- Making concessions when justifiable (admit when you are wrong).
- Keeping an open attitude toward another person or idea (be open minded).
- Minimizing objectionable aspects of another person's ideas, and building on the positive aspects if possible.
- Helping to clarify another person's thinking.
- Taking the time to see and understand another point of view.
- Giving credit where credit is due.
- Telling others in advance about changes that will affect them.

## INSPECTOR'S STANDARDS OF BEHAVIOR

The inspector's attitude is important and should be a positive one. If the inspector is critical, he or she can expect little or no cooperation from the building owner or manager.

### **Negativism will reduce the effectiveness of code compliance.**

The professionalism of the inspector will assist in getting the job done. Knowing how to question someone about a problem without causing undue stress on the building owner or manager will make the inspector's job easier and make the inspector more efficient. To reflect the proper image for himself or herself, as well as the department, his or her closing interview and report should recommend/identify corrective action to be taken without opinions or biases; don't sacrifice accuracy and completeness.

Department rules and regulations usually address the rules of conduct. However, in public, the inspector must conduct himself or herself as a professional — friendly and polite at all times. Remember, it costs nothing to be polite.

Your organization's image can be based solely on your conduct of behavior and attitude when conducting an inspection.

## CODE OF ETHICS FOR FIRE PREVENTION

Ethics is the code of morals of a particular person. Honesty, justice and courtesy form a moral philosophy.

One of the underlying purposes of codes is to see that general fire safety is observed. These laws have established correct procedures and proper rules of conduct. If an individual's rights are not respected to the fullest extent of the law, then the code can be declared null and void. When we develop the inspection program, we must include the traits of leadership: honest motives, correct attitudes and practical wisdom. Deep down, we need principles to guide us during the discharge of our duties. We must maintain our integrity and discharge our duties with fairness and impartiality at all times. We must avoid any association with enterprises of questionable character.

Questions and conditions arise from time to time regarding what may or may not be ethical. Many states and local communities have, by law, established ethical standards that must be followed by government employees during the course of their employment. We may have established our own personal ethical behavior that relates to our own moral standards. The following questions may be used when determining if a decision on an action you are about to make or take is an ethical one:

- Do I feel embarrassed/guilty?
- Do I object to my decision being published?
- Am I willing to risk criticism for my decision?
- Could I justify and defend my decision to my greatest critics and enemies?
- Have I considered everyone who will be affected?
- Does it feel right?

### **\*Code of Ethics for Fire Marshals**

On May 17, 1966, the Fire Marshals Association of North America adopted a code of ethics. The code established conduct for the fire marshal's professional life, relations with employees, relations with other fire marshals, and relations with the public. The code of ethics for relations with the public, as published by the Fire Marshals Association of North America section of the NFPA, is as follows:

#### **RELATIONS WITH THE PUBLIC**

The fire marshal will endeavor to extend public knowledge of fire protection and will discourage the spreading of untrue, unfair and exaggerated statements regarding fire protection. He will avoid any endorsement of any specific product, trade name or company.

He will have due regard for the safety of life and health of the public and employees who may be affected by the work for which he is responsible.

He will express an opinion only when it is founded on adequate knowledge and honest conviction while he is serving as a witness before a court, commission, or other tribunal.

He will not issue *ex parte* statements\*, criticisms or arguments on matters connected with public policy which are inspired or paid for by private interests, unless he indicates on whose behalf he is making the statement.

He will refrain from expressing publicly an opinion on a fire protection subject unless he is informed as to the facts relating thereto.

He will act with fairness and justice with the public when dealing with fire protection. He will never act officiously or permit personal feeling, prejudices, animosities or friendship to influence his decisions.

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\*He will disclose no information concerning the business affairs or technical processes to the public without their consent.