

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Hotels and Multiple Dwellings

Inspection Fees

Adopted Amendment: N.J.A.C. 5:10-1.12

Proposed: June 2, 2014, at 46 N.J.R. 897(a).

Adopted: August 22, 2014, by Richard E. Constable, III, Commissioner, Department of Community Affairs.

Filed: September 4, 2014, as R.2014 d.148, **without change.**

Authority: N.J.S.A. 55:13A-13.

Effective Date: October 6, 2014.

Expiration Date: June 16, 2016.

Summary of Public Comments and Agency Responses:

Comments were received from Nicholas J. Kikis, Director, Legislative and Regulatory Affairs, New Jersey Apartment Association, and from Marie D. Mirra, CPA, President, Community Associations Institute, New Jersey Chapter.

COMMENT: Both the New Jersey Apartment Association (NJAA) and the Community Associations Institute, New Jersey Chapter (CAI-NJ) state that an increase in excess of 28 percent is unprecedented and far outpaces inflation and oppose the increase for this

reason. The NJAA points out that, when the Department last proposed to increase five-year inspection fees in October 2008, the Consumer Price Index stood at 240.1 in the month prior to proposal, while in the month prior to the current June 2014 proposal, the same index stood at 261.2, reflecting an increase in prices, or inflation, of 8.8 percent since five-year inspection fees were last increased (U.S. Bureau of Labor Statistics, CPI-U, New York-Northern New Jersey-Long Island). It is important to note that, concurrent with this proposal, the Department is also increasing permit, inspection, and licensing fees for many other programs under the Division of Codes and Standards, of which the Bureau of Housing Inspection is a part, by approximately 11 percent (PRN-2014-068). These fees similarly have not been increased since 2009. There is no reason why the Bureau of Housing Inspection should be less efficient than other parts of the Division of Codes and Standards justifying increases beyond the approximately 11 percent increase proposed in PRN-2014-068. Additionally, just as the private sector must always seek to achieve efficiencies to keep down costs and remain competitive, it is incumbent upon our government to do the same. The NJAA respectfully requests that the Department modify the proposed increase to remain in-line with inflation, which includes increases in rents, and fee increases for other programs under the purview of the Division of Codes and Standards. A still significant across-the-board increase of 11 percent, rounded up to the next whole dollar increment, would result new revenue to the Department that should adequately cover increases in costs associated with operating the five year inspection program.

RESPONSE: The calculation of the proposed fee increase for the Bureau of Housing Inspection is set forth in response to a comment below. While it is true that the

percentage increase proposed for other enforcement programs is lower, these programs are not directly comparable. Each of the enforcement programs has a different mandate and organization and the fees are structured differently. For example, the Uniform Construction Code provides for a State permit surcharge (See N.J.A.C. 5:23-4.19) which is used to fund the education and licensing programs and technical support for enforcement of the Uniform Construction Code. This is a very small fee, but it is charged on all permits Statewide. The Department is sensitive to the arguments raised and to the need to perform all of its regulatory functions as cost effectively as possible.

COMMENT: Most affected communities, both apartments and homeowners' associations, maintain budgets that coincide with the calendar year. The New Jersey Apartment Association asked that the Department delay the effective date of any increase to January 2015 to give the multifamily industry an opportunity to plan for the increase in fees. The Department could issue a notice of its intent so that all stakeholders have adequate time to prepare when budgeting.

RESPONSE: The Department does understand the need for owners and managers to budget for any increased expense. However, while the statute provides for a fee increase once every three years, there has been no increase in more than five years. The State runs on a fiscal year which begins on July 1. The fee increase is necessary to balance the current fiscal year budget and is already delayed beyond the first quarter. The number of buildings or projects which will be affected by the increase in the remaining months of calendar year 2014 is relatively small, the cost is not significant as compared to the overall budgets of these communities and it is an expense borne only once every five years.

COMMENT: N.J.S.A. 55:13A-13(e) authorizes the Department to establish by rule, not more frequently than once every three years, such fees as may be necessary to cover the cost of enforcement. Regardless of the Department's actual costs, increases shall not exceed "the percentage increase in salaries paid to State employees since the then current fee schedule was established." Both commenters asked that the data and calculations that served as the basis for this increase be made public.

RESPONSE: The fee increase was derived from two separate numbers: an increase in wages and an increase in the fringe benefit rate. (See breakdown below.) The wage increase is based on the negotiated union contracts; the fringe benefit rate is based on a fringe benefit circular letter. The current fringe benefit circular letter issued by the Office of Management and Budget (OMB) is 14-13-OMB.

The percentage for the increase in wages follows:

July 2009 3.5 percent

July 2010 3.5 percent

July 2013 1.0 percent

July 2014 1.75 percent

Total increase 9.75 percent

The increase for the fringe benefits follows:

July 2008 33.15 percent

July 2014 50.75 percent

Total Increase 17.60 percent

Total Fee Increase (wage increase + fringe benefit): 27.35 percent

COMMENT: The Department should seek increased efficiencies in code enforcement. Additionally, the Department should devote its resources to the inspection of buildings that are not well maintained. N.J.S.A. 55:13A-13 authorizes the Department “upon finding a consistent pattern of compliance with the maintenance standards established under this act in at least 20 percent of the units” to terminate the inspection, issue a certificate of inspection, and only charge for the units inspected.

RESPONSE: The Department agrees that code enforcement should be performed as efficiently as possible. In addition to the statutory provision for inspection of 20 percent of the units as referenced in the comment, the Department has rules providing for the acceptance of municipal property maintenance inspections and resale inspections. (See N.J.A.C. 5:10-1.10.) The Department is also pursuing increased efficiency through the development of a new, electronic system for registrations, inspections, and other administrative tasks associated with housing code enforcement.

COMMENT: The CAI-NJ objects to the content of the Regulatory Flexibility Statement and of the Housing Affordability Impact Analysis. Homeowners in common interest communities are not small businesses. And these communities include seniors on fixed income and units occupied by households of low or moderate income. The impact on these communities and on the households of limited means in them must be considered.

RESPONSE: While the percentage increase in the inspection fee is significant, it is not a significant amount of money when calculated on a per unit basis and it is paid only once every five years. Therefore, the Department cannot agree that the proposed increase impacts housing affordability.

Federal Standards Statement

No Federal standards analysis is required because these amendments are not being adopted under the authority of, or in order to implement, comply with, or participate in, any program established under, Federal law or any State statute that incorporates or refers to a Federal law, standards, or requirements.

Full text of the adoption follows:

TEXT