

Chapter 1: Scope and Administration

General Comments

This chapter addresses the administration and enforcement of the code. The objectives and mandate for enforcement are beyond the scope of this chapter. Before adopting the code, a state or local government must establish and designate an agency having staff trained to administer and enforce the code. The administrative relationships, designation of the enforcement authority (fire code official), funding, training and certification of inspectors and scope of the enforcement program are determined by the adopting body.

Management personnel generally perform functions such as planning, organizing, directing, controlling, analyzing and budgeting. Though the code administrator's duties may include all of these functions, this chapter takes a much narrower view of the code administrative function, dealing mainly with technical and legal areas. Fire prevention code administration must be considered in the context of a complex environment containing political, social, economic, technical and legal dimensions. Enforcement, too, is a broad, all-inclusive term that includes a range of activities aimed at identifying and eliminating hazards; in this case, hazards causing or contributing to a fire or impairing life safety.

Four functions are commonly associated with enforcement: inspecting, detecting, notifying and reporting [see Figure 1(1)]. Chapter 1 serves as the basis for administering a code enforcement program consisting of these

functions. This chapter describes the technical and legal requirements associated with administering a code enforcement program to achieve these functions. The examination of these concepts specifically provides a better understanding of the fire code official's authority, duties and liabilities.

Two main duties of the fire code official are administration and enforcement. In administration, the following concepts are most important:

Code Administrative Environment

Many administrative or management functions are not addressed in the code. Before provisions of this document can be of any use, many basic questions must be answered. Jurisdictions adopting a code enforcement program are using discretionary powers to fulfill a community need. The need in the community must be clearly identified, the program mission clearly established and the most appropriate delivery system selected. To address the technical and legal demands of the code administrative environment, the code assumes that jurisdictions adopting the document are interested in protecting the health, safety and welfare of its citizens from the effects of fires and explosions. Additionally, the code assumes that these jurisdictions are authorized to use the police power of the state to receive these benefits. Finally, the code assigns principal responsibility for enforcing this document to the department or agency (fire department or fire prevention bureau) most frequently available to perform this mission.

The particular objectives and social or political mandate of a code enforcement program are not considered in the context of this document. These items, however, are often cited as the most frustrating problems faced by code administrators. Code enforcers often complain of being overwhelmed by demands for leniency or special consideration based on the economic, social or political effects of their decisions.

As stated, this chapter establishes ground rules for enforcing the code; however, these ground rules are only the technical and legal requirements binding both fire code officials and the general public. For guidance on the political, social and economic considerations associated with code enforcement activities, adopting authorities must turn elsewhere; however, none of this is intended to imply that these considerations are absent from the code process. To the contrary, by establishing these requirements as "minimums," the membership has, through a democratic process of public hearings and debate, attempted to weigh these considerations carefully when deliberating, modifying and adopting the provisions appearing in this document (voting members

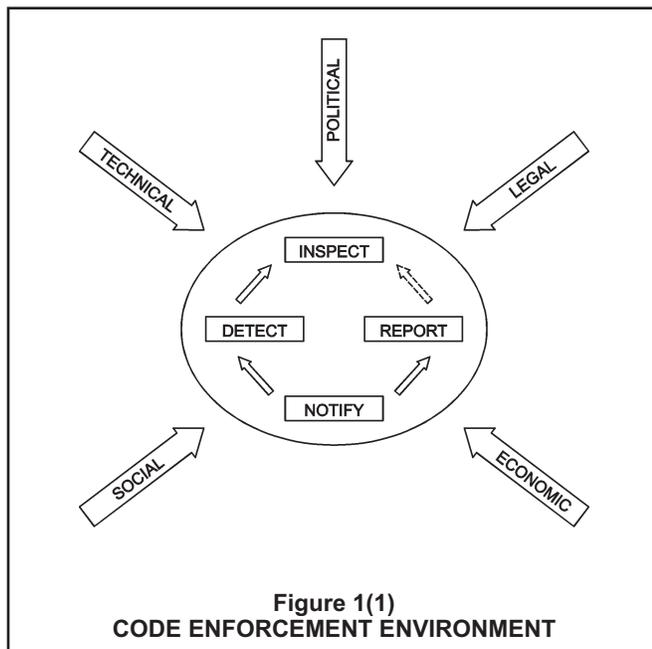


Figure 1(1)
CODE ENFORCEMENT ENVIRONMENT

are fire code officials representing jurisdictions). In the end, each jurisdiction must give careful consideration to how these requirements should be adopted, who should be responsible for enforcing them, how this personnel should be trained, how the operation will be financed and when and how to modify or change operations if necessary. These considerations deserve careful, thorough public attention before a decision is made to adopt and enforce the code.

Scope and Applicability of the Code

The code applies to all structures and premises, both new and existing, in all matters related to occupancy and maintenance for the protection of lives and property from fire. Conditions possibly causing or contributing to the start or spread of fire or protection of life from hazards incident to occupancy and maintenance are regulated as follows:

Retroactivity: Because the code applies to both new and existing structures and premises, the existing building provisions may be considered retroactive. Existing structures and premises built in compliance with the codes and standards in effect at the time of their original construction or alteration are not exempt from code compliance.

Other codes and standards: The code relies heavily on other codes and standards to specify a means of complying with its provisions, including the *International Building Code*® (IBC®), the *International Mechanical Code*® (IMC®), the *International Fuel Gas Code*® (IFGC®) and the standards referenced in the text. Additionally, other federal, state and local codes and ordinances may establish certain requirements related to fire protection and life safety. Code requirements are intended to complement other regulations. When conflicts arise between code provisions and the referenced standards, the code provisions apply. Where a standard provides additional technical detail or guidance beyond that provided in the related code text, the fire code official must use judgement when applying these provisions to prevent conflicts with the code provisions. If a conflict arises, it is the fire code official’s duty to determine which provisions secure the code’s intent. When a conflict between codes or other legal action causes a portion of this document to be “struck down,” such action is not intended to invalidate the remaining code provisions. The severability of code provisions, however, does not imply that these same provisions should be considered or applied outside of their context as a part of the code.

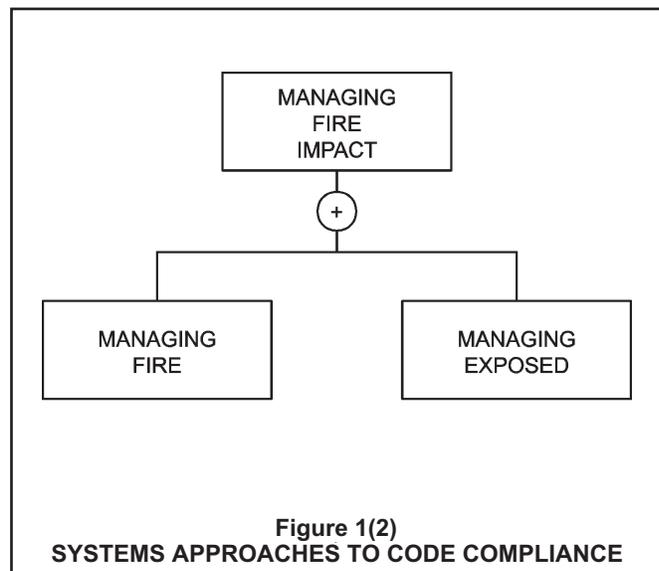
Fire Code Official’s Judgement

The code relies heavily not only on other codes and standards but also on the judgement and experience of the fire code official.

Approval: The code details occupancy and maintenance requirements; however, it relies heavily on performance criteria, as opposed to detailed specifications, to accomplish this task. The fire code official, therefore,

must exercise judgement when approving or permitting operations, processes and procedures required by the code. Proof of compliance may include certification or labeling by independent testing laboratories; however, regardless of the conclusions of these external agencies and authorities, the fire code official remains the sole judge of what fulfills the intent of the code. This becomes particularly important when the fire code official is asked to evaluate equivalent methods and materials. Piles of data may be impressive, but they may be meaningless when considered in the context of the code’s intent. Data in support of alternative methods and materials must demonstrate not only compliance with the code’s intent but also relevance to the issues at hand. Evidence, such as a label or an independent laboratory test report, may sometimes be used inappropriately to support an application for recognition of equivalency. The fire code official must evaluate all submitted evidence to make sure it applies to its intended use, as well as to the code’s intent. In an increasingly technical and litigious society, learning how to make such decisions and judgements may be the biggest challenge facing fire code officials. Relying on strict interpretations of intent or the “letter” of the code may be the conservative way, but conservative approaches may simply increase the social and political pressures confronting fire code officials. Computers have become desktop fixtures in today’s professional offices. Decision aids taking advantage of contemporary computer technology have become increasingly popular as well. These models permit designers to quickly and easily evaluate the relationships and performance of a variety of complex variables.

Another model that does not rely on a computer is NFPA 550 [see Figure 1(2)]. This model requires little training to use or understand and is an all-inclusive representation of the variables contributing to fire safety. The model may, therefore, serve as a useful tool for qualitatively evaluating the contribution of various approaches to an overall fire safety system. Once equivalent alternative methods have been identified using the



Fire Safety Concepts Tree (see “General Comments” in Chapter 3), quantitative (cost/benefit) analyses may be applied. These decision aids permit a designer to propose more innovative and creative responses to complex problems. Fire code officials must begin to recognize, use and interpret these tools and data to maintain effective protection.

Fire Code Officials and Liability

Like all professionals, fire code officials are subject to legal action. The two most common legal actions that may be pursued against fire code officials are breach of contract lawsuits and tort claims. Tort claims, by far, are the most common lawsuits. These lawsuits allege that some damage, injury or harm (a tort) resulted from the actions of the fire code official. A successful tort claim must prove that the plaintiff was injured or harmed; that the fire code official had a legal duty or obligation to perform with respect to the plaintiff and that the cause of the plaintiff’s injury was the fire code official’s actions or inactions while performing these duties.

The Law of Torts includes the following:

The tort: Damages arising from the acts of fire code officials fall into two broad categories: property and personal [see Figure 1(3)]. Property torts involve the control, use, operation or ownership of personal and real property by private individuals. Personal torts involve physical, verbal or written assaults on the character, person, psyche or privacy of individuals. Such assaults or invasions may involve actual contact or threat of harm. For example, fire code officials’ acts of commission may restrain business or trade activity, while acts of omission may fail to recognize that hazards need to be corrected, thus resulting in life or property losses.

Property Trespass Conversion Nuisance	Personal Assault and Battery False Arrest or Imprisonment Defamation, Slander and Libel
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Source: Rosenbauer, D.L., *Introduction to Fire Protection Law*.

**Figure 1(3)
TYPES OF TORTS**

Two actions dominate lawsuits filed against enforcement authorities: Most lawsuits either allege improper acts by the fire code official (acts of commission) or failure to fulfill specified or implied legal obligations (acts of omission). In the former, plaintiffs usually seek temporary or permanent relief from a fire code official’s decision. In these actions, plaintiffs usually allege improper interpretation or application of the code or its intent. Other lawsuits usually allege failure to exercise a reasonable standard of care in the performance of duties of the fire code official. In either type of lawsuit, and often in

the case of omissions, plaintiffs seek compensatory and even punitive damages. Infringements on constitutional protections may be, though occurring infrequently, the basis for lawsuits against fire code officials. Common constitutional issues raised in lawsuits against fire code officials include violations of the Fourth Amendment’s protection against unreasonable searches and seizures, the Sixth Amendment’s due process protections and the Fourteenth Amendment’s equal protection provisions. First Amendment rights guaranteed under the freedom of association protections may be raised in cases involving public assembly occupancies, especially churches.

Condition of negligence: To prevail in a tort claim action, a plaintiff must demonstrate negligence on the part of the defendant. Negligence may be simple—a failure to exercise reasonable or adequate care when performing assigned duties (commonly known as misfeasance)—or it may be gross—represented by wanton, willful, reckless or malicious disregard for public safety. Criminal activities, including dereliction (nonfeasance) or the failure to perform required assigned duties, may be cause for claims of gross negligence. Likewise, malfeasance, the willful or malicious violation of a legal duty, may constitute grossly negligent behavior. The following three elements must be proven to sustain a claim of negligence: the defendant had a duty to act, the defendant failed to exercise the required standard of care in the performance of that duty and, as a result of that failure, damage or harm was incurred by the plaintiff.

Duty to act: The code establishes few duties of the fire code official. Instead, it places greatest emphasis on the responsibility of structure or premises owners and operators to perform their duties with adequate regard for public health, safety and welfare. The duties owed the public by the fire code official fall under the following categories: approvals, enforcement, personnel, inspections, investigations, reports and record keeping. Other duties may be assumed by fire code officials through the performance of their official duties. Recently, some courts have ruled that failure to perform timely reinspections or exhaust legal remedies against violators in fire code cases creates a special relationship between the fire code official and the occupants of properties in violation of the code, especially when the occupants do not own the property and are not responsible for code compliance. Some court rulings have even implied that conducting inspections not otherwise required by the code constitutes an ultra vires (beyond the authority of) liability. Fire code officials should consult their jurisdiction’s legal counsel to determine how these decisions, the jurisdiction’s enforcement policies and the code provisions combined affect their enforcement program and jurisdictional and personal liabilities.

Standard of care: Taken together, the fire code official’s duties are the basis for determining his or her standard of care. When assessing whether fire code officials have met this standard, judges and juries must determine whether they performed the required duties as reasonable, comparably trained and experienced fire code