



OFFICE OF THE ILLINOIS STATE FIRE MARSHAL

JB Pritzker, Governor
Matt Perez, State Fire Marshal

To: All Local Municipal and Governmental Authorities
From: State Fire Marshal, Office of the State Fire Marshal, State of Illinois
Date: November 13, 2019
Topic: Applicability of the State-Adopted Life Safety Code

In an effort to clarify the role of the Office of the State Fire Marshal (OSFM) in matters related to fire investigations and fire safety inspections conducted within the State of Illinois, I offer the following:

Please take note that significant portions of this document have changed from prior communications covering the same topic from this office. This shift in approach is primarily attributable to OSFM addressing home rule authority differently than it has in the past based upon recent Illinois Supreme Court case law. Another notable change, which is separate and apart from OSFM's treatment of home rule authority, is that OSFM has recently updated its administrative rules, which, in part, updates the adopted life safety code from the NFPA 101, Life Safety Code (2000 Edition) to the NFPA 101, Life Safety Code (2015 Edition). This update to the 2015 Edition of the NFPA 101 becomes effective on January 1, 2020. The impact of this administrative rule update will depend on a municipality's home rule status or determined equivalency. Additional details may be found below.

Fire Investigations

The Illinois General Assembly enacted the Fire Investigation Act (the "Act") (425 ILCS 25) in 1909. The legislature specifically selected the OSFM to investigate and to supervise the investigation of fires by the Chiefs of all legally organized municipal fire departments and fire protection districts within the State of Illinois. The Act also assigned local Fire Chiefs the responsibility to determine if fires occurring in their respective communities were accidental or by design (cause and origin determinations).

If it is determined that the fire may have been intentionally set (arson), the Chief can take one of two paths:

1. The local department can conduct an arson investigation if they have the capability and resources.
2. The local department can request that the OSFM conduct an arson investigation if they do not have the capability and resources.

The OSFM reserves the right to conduct an arson investigation at any juncture where circumstances deem it appropriate.

Fire Safety Inspections

The legislature issued an additionally important mandate in the Act. It required the State Fire Marshal to adopt and promulgate rules to protect the public from fire hazards (425 ILCS 25/9). OSFM has recently updated the adopted life safety code from the NFPA 101, Life Safety Code (2000 Edition) to the NFPA 101, Life Safety Code (2015 Edition), effective on January 1, 2020. The home rule status of a



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municipality will largely inform whether the OSFM life safety code – adopted by administrative rule pursuant to the Act – is the mandated applicable minimum standard in a given municipality.

- For home rule municipalities, prior to January 1, 2020, the municipality can opt either to adopt fire prevention and life safety standards of its own choosing or to follow the OSFM-adopted NFPA 101, Life Safety Code (2000 Edition). For home rule municipalities, after January 1, 2020, the municipality can opt either to adopt fire prevention and life safety standards of its own choosing or to follow the OSFM-adopted NFPA 101, Life Safety Code (2015 Edition). Notwithstanding the above, the OSFM-adopted life safety code still applies to state buildings, state-licensed facilities, and other occupancies under the purview of OSFM that are located in home rule municipalities.
- Unlike home rule municipalities, non-home rule municipalities are mandated to enforce fire prevention and life safety standards that are equal to or greater than the OSFM-adopted life safety code. Therefore, prior to January 1, 2020, non-home rule municipalities that have not adopted fire prevention and life safety standards that are equal to or greater than the OSFM-adopted NFPA 101, Life Safety Code (2000 Edition) are required to use the NFPA 101, Life Safety Code (2000 Edition). After January 1, 2020, non-home rule municipalities that have not adopted fire prevention and life safety standards that are equal to or greater than the OSFM-adopted NFPA 101, Life Safety Code (2015 Edition) are required to use the NFPA 101, Life Safety Code (2015 Edition). Additionally, once the new administrative rules become effective, there will be newly-established methods for non-home rule municipalities to demonstrate equivalency with the OSFM-adopted life safety code. Notwithstanding the above, the OSFM-adopted life safety code still applies to state buildings, state-licensed facilities, and other occupancies under the purview of OSFM that are located in non-home rule municipalities with codes that are determined to be equal to or greater than the OSFM-adopted code.

The right of entry for the purpose of inspecting properties was granted to both the OSFM and the Chiefs of all municipal fire departments and fire protection districts. The OSFM's jurisdiction to inspect properties for fire hazards is not exclusive. While the OSFM is required by the law to inspect all state public buildings, public schools, and occupancies licensed by the state, its jurisdiction to inspect private and commercial occupancies is concurrent with our local fire service partners.

The OSFM depends on local departments to be vigilant in pre-planning and identifying hazards in all buildings within their respective communities. This expectation does not mean that every department/district must conduct regular safety inspections of buildings within their areas. With that said, routine fire safety inspections not only ensure that buildings are safe, they also provide an opportunity to pre-plan and reconnoiter the building so firefighters know what to expect during an emergency. This ultimately enhances your response capabilities and furthers public safety.

Regular inspections would be ideal and should be an aspirational goal that every department or fire protection district strives for, but I understand that it is not realistic in some areas of our state. Although the Act does not require Fire Chiefs or their designees to conduct routine inspections, it does require, at a minimum, that Fire Chiefs or their designees report safety violations when discovered and take appropriate enforcement action to address them as necessary. This can take several forms:



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1. For local departments/districts that enforce a code different from the OSFM-adopted minimum or maintain a dedicated fire prevention bureau, these violations are best handled by using locally adopted ordinances that spell out enforcement procedures. The OSFM is available to assist our local partners with technical support relating to NFPA 101 code interpretation.
2. For local departments/districts that do not have locally adopted ordinances on enforcement, violations should be handled by the local department/district. The designated local official should notify the building owner/tenant of the specific violation(s) in writing, and provide them with an opportunity to remediate the situation or to file an appeal with the local authority. If the violation is upheld or modified, the person against whom the final order has been issued may seek review of the decision in the circuit court. Fire safety violations are petty offenses under the Act and violators are subject to fines and injunctive orders issued by the circuit court. The role of the OSFM in situations where local departments/districts do not have locally adopted ordinances or dedicated fire prevention bureaus can vary based upon the circumstances and may include:
 - advisory/technical support relating to code interpretation
 - assistance in conducting an inspection
 - assistance in writing a notice of violation
 - a direct referral of the matter to the OSFM when OSFM assets are available to perform such contemplated inspection/enforcement action
3. The Fire Protection District Act (70 ILCS 705) also now provides Fire Protection District Fire Chiefs with an additional avenue of enforcement should he or she not be able to achieve compliance with orders issued under 70 ILCS 705/11m(b) or 70 ILCS 705/11m(c). If this is the case, pursuant to 70 ILCS 705/11m(d), the Fire Protection District Fire Chief may refer such an order to the State's Attorney so that the State's Attorney may (at its discretion) enforce the Fire Chief's order.

The important message here is that the OSFM understands that fulfilling our duties as spelled out in the Act will require teamwork on both our parts. The OSFM recognizes the issues that can arise in carrying out your assigned duties and we are dedicated to helping you through partnership.

Tools and Training

In an effort to help municipal fire departments and fire protection districts that do not have a fire inspection program, the OSFM has developed a free, on-line interactive Life Safety Code training program. An updated version incorporating changes from the 2015 Edition of the NFPA 101, Life Safety Code is currently in development. This program is available to all Illinois firefighters and access to the class can be obtained by filling out the training request form at:

<https://www2.illinois.gov/sites/sfm/Iam/FireDepartment/FirefighterTraining/Pages/LifeSafetyCodeTrainingRequest.aspx>

For those municipalities that enforce the OSFM-adopted code, training will be available directly from NFPA. Classes are currently scheduled for December 2019, with further dates to be announced in 2020.



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Along with the training, we are developing a sample inspection checklist that can be modified or tailored to fit the demands of your department/district. The checklist is being designed as a tool to assist individuals who conduct fire inspections, or to simply use as a notice of violation when a violation is found. We are also developing an instructional video which will be placed on our website that will help familiarize you with using the sample inspection checklist. In the future, in cooperation with IFSI, we will offer onsite inspection training that will further enhance your ability to recognize hazardous conditions and carry out an inspection program that will address the requirements of the Act.

Protection

The OSFM notes that while every department should strive to conduct accurate and thorough inspections, mistakes or omissions may occur. If such mistakes or omissions do happen, there are statutes (e.g., the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10)) and case law that discuss the possibility of immunity protection for public entities and public employees stemming from inspections. The availability of governmental tort immunity as a defense will ultimately depend on the specific facts and circumstances of the matter in question. Therefore, if additional guidance on this issue is needed, a local department/district should consider seeking the advice of legal counsel.

The OSFM understands that it is no easy task for Fire Chiefs throughout the state. Recognizing that Fire Chiefs should not have to worry about being criminally penalized for being unable to meet requirements of the Fire Investigation Act, recent legislation brought by OSFM (P.A. 101-0082) has repealed provisions imposing a petty offense charge against Fire Chiefs who do not comply with the requirements of the Act.

In closing, I want to personally thank each of you for the work you do to keep Illinois safe. I look forward to working with all of you in furtherance of improving fire safety within our state. If you have questions about this communication please direct them to sfm.info@illinois.gov.

Matt Perez

State Fire Marshal