



**LFN 2020-27**

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# Local Finance Notice

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## Dedication of Revenue Earned from Uniform Construction Code Enforcement

Revenue earned from construction code (UCC) enforcement fees must be dedicated to UCC enforcement rather than diverted to support the general fund.

[Local Finance Notice 2017-15](#) reminded local governments with UCC enforcement offices of fee limitations set forth in State law and how fee proceeds must be budgeted and accounted for. However, there continue to be instances where municipal UCC enforcement offices consistently earn revenue well exceeding those offices' operating costs. This guidance, issued jointly by the Division of Local Government Services and the Division of Codes and Standards, serves to update Local Finance Notice 2017-15 as well as specify measures the Department of Community Affairs is taking to address continuing non-compliance.

### Adequate Staffing Required

N.J.A.C. 5:23-4.4(d) requires municipalities with UCC enforcement offices to budget for sufficient staff to handle reviews and inspections in a timely fashion. The established period for completing permit application review is within 20 business days. N.J.A.C. 5:23-2.16(a). Inspections are to be scheduled and performed within three business days of the time for which inspection has been requested. N.J.A.C. 5:23-4.5(h)1(ix). Office hours shall be commensurate with the level of construction activity in the municipality. N.J.A.C. 5:23-4.4(b).

Diverting UCC fee revenue to the general fund, instead of utilizing fee revenue to hire or contract for adequate staff, is particularly egregious when an enforcement office has consistent backlogs. Extended wait times for inspections and approvals depresses economic activity and delays the addition of new ratables. Even when an enforcement office is adequately staffed, setting fees at a level greater than that needed to operate the office, and routinely diverting the surplus to the general fund, particularly burdens taxpayers performing home improvements requiring one or more permits.

### **Enforcement by Department of Community Affairs**

The Division of Codes and Standards' Office of Regulatory Affairs routinely conducts financial audits of the [UCC Annual Reports](#) submitted to Codes. In conjunction with that audit, staffing and other factors are reviewed for regulatory compliance. If the Office of Regulatory Affairs determines a municipality is non-compliant with the Uniform Construction Code, by no later than April 1<sup>st</sup> the Office will issue a letter to the municipality specifying actions to be taken within 30 days to come into compliance. The Division of Codes and Standards may order the municipality to undertake corrective action as necessary. Please contact Terence Luckie, Supervisor of Enforcement, or Christopher Ferrara at (609) 984-7672 with any questions on Office of Regulatory Affairs procedures.

The appropriation and expenditure of construction code fee revenues shall be tested annually for compliance with [N.J.A.C. 5:23-4.17](#) as part of the municipal audit. Please review the remaining sections for further explanation of how UCC fees must be calculated, budgeted, and accounted for. As is the case for municipal court and dog license revenues, a separate [dedicated report](#) must be included with the annual audit; CFOs shall be responsible for providing their auditors with all information necessary to complete the dedicated report.

If the Office of Regulatory Affairs determines additional review is needed to verify whether a municipality is using UCC fees as permitted, the Division of Local Government Services will order the municipality to perform further sample testing (over and above the annual audit's dedicated report) of the supporting expenditures for all direct and indirect expenses allocated to their construction department. This testing should provide support to validate the appropriateness of the charges as they relate to compliance with N.J.A.C. 5:23-4.17, namely that all expenditures of construction code fees have been made for purposes permitted under the regulation. The outcome of said testing shall be provided to the Office of Regulatory Affairs within the specified timeframe and shall be specifically reflected as a separate opinion contained in an addendum to the municipality's annual audit. The CFO is responsible for providing the auditor with all necessary supplemental supporting information.

### **Permitted Uses of Construction Code Fees**

N.J.S.A. 52:27D-126a limits municipal fees for plan review, certificates of occupancy and issuance of construction, demolition, moving of building, elevator, and sign permits to only the level necessary to satisfy the enforcement agency's annual operating costs. Department regulations, specifically [N.J.A.C. 5:23-4.17 and 4.18](#), establish the parameters governing municipal construction code fees.

The fee schedule set by municipal ordinance must be calculated to reasonably cover the municipal costs of enforcing the regulations, and shall be reviewed against the revenues and expenditures listed in the Division of Codes and Standards [UCC Annual Report](#) along with the accompanying recommendation from the construction code official on whether changes to the fee schedule are necessary.

Subsection (c) of N.J.A.C. 5:23-4.17 strictly limits which costs can be utilized in calculating construction code enforcement fees. Appendix A details allowable costs.

Indirect and overhead expenses charged to construction code fee revenues shall not exceed 12 percent of all other costs of the enforcing agency unless the indirect and overhead expenses of the

municipality exceed 12 percent of the entire municipal budget, in which case indirect and overhead expense may be charged to construction code fee revenues in proportion to the general municipal overhead and expense ratio. A detailed written justification for any charge for indirect and overhead expenses exceeding 12 percent must be prepared and made available for inspection both by the Department of Community Affairs and by the public.

If the municipality deposits UCC fee revenue into a trust fund (“dedication by rider”), fees may be set at such a level so as to accumulate a reasonable level of funds for offsetting future code enforcement expenses. Use a three-year average for projecting a “reasonable” level of future expenses. See the “Budgeting and Accounting” section below for further discussion on dedicating construction code fee revenue.

Subsection (d) of N.J.A.C. 5:23-4.17 governs fees for development-wide inspection of homes after issuance of a certificate of occupancy. Municipal construction code enforcement fees are subject to further standards set forth in N.J.A.C. 5:23-4.18.

### **Treatment of Fees in Shared Services or Third-Party Vendor Context**

When construction code enforcement is provided under a shared services agreement, one uniform fee schedule shall be applied by all parties to the agreement. Said fee shall be collected by the party administering and enforcing the regulations, with no additional fee required to be paid by an applicant to any municipality or county. The enforcing agency shall maintain financial records showing for each municipality the amounts of money collected and expended.

In instances where private on-site inspection and plan review agencies carry out all local code enforcement responsibilities, fees cannot exceed the contracted amount the municipality must pay the third-party vendor(s) except to cover additional overhead and other operational costs incurred by the municipality in connection with the administration of code enforcement activities. In instances where private on-site inspection and plan review agencies carry out a portion of the enforcement responsibilities of the local code enforcement agency for one or more disciplines, fee revenue cannot exceed the contracted amount the municipality must pay the third-party vendor(s) and the costs incurred by the municipality in carrying out its enforcement responsibilities as allowed pursuant to N.J.A.C. 5:23-4.17 and as described in this Notice.

### **Construction Code Fee Budgeting and Accounting**

It bears repeating that revenue earned from construction code enforcement fees must be dedicated to UCC enforcement. Municipalities can dedicate fee revenue in either one of two ways.

The first method, set forth in N.J.S.A. 40A:4-36, is to state fee revenues in a separate section of the budget according to their respective sources together with the appropriations for the purposes to which such revenues are applicable; with the total of anticipated revenues equaling the total of appropriations. Under this method, current year revenue cannot exceed prior year realized revenue absent documentation supporting the disparity (e.g. amended ordinance to increase fees, substantial increase in the number of inspections).

The second method of dedicating UCC fee revenue is to utilize a “dedication by rider” (i.e. a trust fund) pursuant to N.J.S.A. 40A:4-39. A dedication by rider must be used if the municipality wishes to accumulate funds at a reasonable level for offsetting future code enforcement expenses.

Although municipalities are not prohibited from using general fund to pay the costs of UCC enforcement when fee revenues are insufficient to cover costs, or when necessary to compensate for work done without fee pursuant to statute or ordinance, municipalities are expected to set fees at a level sufficient to cover the costs of their construction code offices.

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Approved: Melanie R. Walter, Director, Division of Local Government Services  
Edward M. Smith, Director, Division of Codes and Standards

<b>Document</b>	<b>Internet Address</b>
LFN 2017-15	<a href="https://www.nj.gov/dca/divisions/dlgs/lfns/17/2017-15.pdf">https://www.nj.gov/dca/divisions/dlgs/lfns/17/2017-15.pdf</a>
N.J.A.C. 5:23-4	<a href="http://www.nj.gov/dca/divisions/codes/codreg/pdf_regs/njac_5_23_4.pdf">http://www.nj.gov/dca/divisions/codes/codreg/pdf_regs/njac_5_23_4.pdf</a>
UCC Annual Report Codes & Standards	<a href="http://www.nj.gov/dca/divisions/dlgs/resources/fa_docs/UCC%20Annual%20Report%20Online.pdf">http://www.nj.gov/dca/divisions/dlgs/resources/fa_docs/UCC%20Annual%20Report%20Online.pdf</a>
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