

97-1 Multifamily Dwelling Code, Department of Commerce

Summary

The Multifamily Dwelling Code, which took effect on April 1, 1995, establishes uniform, statewide minimum and maximum standards for housing units that are three or more attached living units not exceeding 60 feet in height or six stories. The code replaced the previous statewide standards in the Commercial Building Code, which established only minimum construction and safety requirements but allowed communities to establish stricter standards through enactment of local ordinances.

1991 Wisconsin Act 269 assigned responsibility to develop, implement, and enforce the uniform code to the Department of Industry, Labor and Human Relations. In the recent reorganization of state agency functions, responsibility for enforcing the code was transferred to the Department of Commerce. In requiring the creation of the uniform code, the Legislature also directed the Legislative Audit Bureau to provide periodic performance audits of the division responsible for inspections of multifamily housing. Therefore, we reviewed both the process by which the code was developed and is enforced and the Department's response to concerns raised during and since its implementation, and we analyzed whether enforcement of the code was timely.

The impetus to develop a statewide uniform code that established maximum construction and safety standards stemmed from two primary concerns. First, builders argued that the variety of local building ordinances that existed across the state required design and construction changes from community to community for essentially the same building, thereby increasing overall construction costs. Second, it was argued that a strengthened statewide code was needed to improve fire safety. While municipalities were able to strengthen the state minimum standards through local ordinances, few communities did so; therefore, buildings in most communities met just the minimum standards. For example, only approximately 16 communities enacted more stringent fire sprinkler standards.

Some local fire officials continue to disagree with the State's policy decision to establish a uniform statewide code and eliminate the authority of local governments to enact more stringent local construction standards. Even though the 16 communities believed by the Department to have had more stringent sprinkler regulations in effect when the new code was enacted were allowed by statute to maintain those regulations, those who disagree with the policy of a uniform code believe communities should be able to enact new local ordinances as well. They believe fire safety is a local issue, and communities should have the option of establishing fire safety regulations more stringent than the statewide standards. On the other hand, other fire officials believe fire safety statewide has actually increased under the new code because few communities enacted stricter local ordinances when they had the authority, and buildings in most communities met only the former minimum statewide standards. The new code incorporates many safety requirements that were not part of the previous code. Because no definitive data are available, differences of opinion over the efficacy of a statewide uniform code versus local authority to enact local standards will likely continue.

The code was developed by the Department with the guidance of the Multifamily Dwelling Council, whose members were appointed by the Governor. In developing the code, the Department followed standard administrative rule-making procedures. The Legislature approved the rules as submitted by the Department.

After the Multifamily Dwelling Code took effect, users of the code identified several concerns related to clarity and interpretation. In response, the Department issued an emergency rule in August 1995 to clarify code provisions that were creating design difficulties and confusion. Additional issues were identified subsequent to that review and incorporated in changes made in June 1996.

However, since these code revision were made, additional examples of lack of clarity or inconsistencies between the code and statutes have been identified. Department staff indicate they plan to address these issues as part of a planned

review of the code scheduled for 1997. We include a recommendation that the Department seek advice from the Multifamily Dwelling Council on revisions to the code and their potential consequences. Because membership has not changed since the Multifamily Dwelling Council was formed in 1993, and the Council was able to help the Department successfully develop a new code, the members can provide the Department with their understanding of problematic code sections and other background information to be used in developing code revisions.

Department staff enforce the code in two ways: by reviewing building plans submitted by designers and builders to ensure that the plans follow the code, and by conducting inspections during the building process to ensure the dwellings are constructed according to the approved plan. To ensure prompt review of plans, s. ILHR 66.15, Wis. Adm. Code, requires the Department to review and make a decision on a submitted building plan within 15 business days after receiving the plan, the appropriate fee, and other necessary information. The code also requires the Department to refund 50 percent of plan review fees when the 15-day limit is exceeded.

To assess the Department's compliance with the 15-day requirement, we reviewed a sample of plans submitted from the time the code went into effect in April 1995 through February 14, 1997, to determine how long it took for the plans to be reviewed. Based on that sample, we estimate that of 1,917 plans submitted, 12.7 percent were not reviewed within the 15-day limit. Department staff were unable to provide information on the number of refunds made to builders in these cases but believed refunds were rare. Staff indicated that refunds were made only if builders requested them, and few did so. Therefore, we include a recommendation that the Department establish monitoring procedures to improve compliance with plan review timeliness requirements and ensure that builders are aware of refund options.
