

Shared Enforcement of the Uniform Code and Energy Code

A Guide to Increasing Efficiency by Sharing
Code Enforcement Responsibilities

Prepared by:

New York State Department of State
Division of Code Enforcement and Administration
99 Washington Avenue
Albany, New York 12231

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Shared Enforcement of the Uniform Code and Energy Code

Introduction

The Code Enforcement Officer (or “CEO”) enforces both the State Uniform Fire Prevention and Building Code (commonly known as the “Uniform Code”) ¹ and the State Energy Conservation Construction Code (commonly known as the “Energy Code”).² In some communities, the CEO may also be tasked with enforcing other laws, such laws relating to flood plains, stormwater, junk, or zoning.

Each local government is responsible for administering and enforcing the Uniform Code and Energy Code within its boundaries, and each local government must establish a code enforcement program that includes the features specified in regulations adopted by the Department of State. For example, a local government’s code enforcement program must address issuance of building permits and certificates of occupancy, inspections, unsafe structures, and record keeping.³

CEOs must complete an initial 114 hour basic training program within one year of initial appointment, and thereafter must complete at least 24 hours of in-service training each year throughout their careers.⁴ These training requirements reflect the complexity of the job of the CEO, and demand a significant commitment on the part of a person who wishes to serve as a CEO. A person who may otherwise be interested in serving as a CEO may be unwilling to invest the time, money and energy required to obtain the required training unless he or she can be reasonably sure of obtaining full time employment as a CEO.

However, a local government may be unable to afford to hire its own certified CEO, and to establish its own code enforcement program serving only its needs. Such a local government may determine that it would be more cost effective to (1) arrange for code enforcement by the county, or (2) share code administration and enforcement responsibilities with one or more other local governments, or (3) contract with a private, non-governmental provider to perform certain code enforcement services.

Code Enforcement by the County

A local government, alone or in concert with other local governments located in the same county, may wish to enter into a service agreement with the county, under which the county will enforce the Uniform Code and Energy Code in the participating local government(s).⁵

Code enforcement by the county pursuant to a service agreement can have several advantages. First, the cost of a county code enforcement program that provides services to several local governments may be less than the combined cost of the local governments' individual programs. Second, the county may be able to afford to hire several professional full time CEOs, while the participating local governments, acting individually, may be able to afford only part-time CEOs. Finally, a single staff providing code enforcement services to a number of local governments can usually be larger than the staff serving only a single local government; the larger staff will typically have broader range of expertise, and having a larger staff will typically permit individual members of the staff to specialize. For example, some staff members may have expertise in the design and construction of one- and two-family residences, and may be permitted to specialize in review of plans related to such buildings, while other staff members may have expertise in the design and construction of multiple dwelling or other commercial structures, and may be permitted to specialize in review of plans related to such buildings.

Note: *A voluntary service agreement providing for administration and enforcement of the Uniform Code by the county should not be confused with the so-called "opt out" process. The Executive Law permits a local government to elect not to enforce the Uniform Code (commonly referred to as "opting out").⁶ The Executive Law provides that if a local government does opt out, responsibility for administering and enforcing the Uniform Code within that local government will pass to the county.⁷ However, a local government entering into a voluntary service agreement that provides for code enforcement by the county will be able to negotiate the terms of the agreement, and to have a degree of control over the nature and quality of the services to be provided by the county. In contrast, a local government that simply opts out will pass all responsibility - and all control - to the county.*

Further, Executive Law section 381(2) also permits a county to opt out of its code enforcement responsibilities. If a county does opt out, responsibility for administering and enforcing the Uniform Code will pass to the Department of State. A local government considering the adoption of a local law opting out of its code enforcement responsibilities should consider the following:

- *Essential elements of code enforcement, such as issuing building permits and performing construction inspections, can be provided more efficiently, and on a more timely basis, at the local or county level, rather than at the State level.*
- *If a local government that opts out is located in a county that has opted out, code enforcement in the local government will be at the State level, and not at the local or county level. (As of the date of this publication, the following fifteen counties have opted out of code enforcement responsibilities: Allegany, Cattaragus,*

Chautauga, Clinton, Essex, Greene, Hamilton, Herkimer, Madison, Oneida, Oswego, Saratoga, Schoharie, St. Lawrence, and Wayne.)

- *If a local government that opts out is located in a county that has not opted out, the county could later elect to opt out, at which time code enforcement in the local government will be at the State level, and not at the local or county level.*

Prior to entering into a service agreement with the county to provide administration and enforcement of the codes, a local government should consider the level of the county's current code enforcement responsibilities. In general, counties fall into one of three groups:

- A county which has not opted out of its code enforcement responsibilities, and which contains at least one local government that has opted out, is responsible for administering and enforcing the Uniform Code with respect to its own buildings and with respect to all buildings (public and private) in the opted-out local government(s). Such a county should have a code enforcement staff sufficient to meet those responsibilities, and may more readily see the value of entering into a service agreement to provide code enforcement in a local government that has not opted out.
- A county which has not opted out of its code enforcement responsibilities, and which contains no local government that has opted out, is responsible for administering and enforcing the Uniform Code only with respect to its own buildings. Such a county may not have a large code enforcement staff, and would need to agree to hire additional staff in order to carry out a service agreement to provide code enforcement in local government(s) in the county.
- A county which has opted out of its code enforcement responsibilities and which does not administer and enforce the Uniform Code even with respect to its own buildings. Such a county probably has no code enforcement staff, and may be the least receptive to a proposal to enter into a service agreement to provide code enforcement in a local government. However, such a county may determine that countywide (or nearly countywide) code enforcement can be provided more efficiently and effectively than code enforcement on a local government - by - local government basis, and, therefore, such a county may be willing to consider a service agreement if all or most of the local governments in the county were willing to join in the arrangement.

The participating local governments and the county will have a great deal of flexibility in structuring the terms of the service agreement. When negotiating and drafting a service agreement between a county and local governments in the county, it is necessary to consider issues such as: the nature and scope of the services to be rendered by the county; the functions (if any) to be performed by each local government; the number and qualifications of staff to be provided by the county (and, if applicable, by the participating local governments); how personnel costs (salaries, insurance, workers' compensation, retirement, training costs, etc.) and other costs will be shared or apportioned; the amount, times, and manner of charges; the collection and distribution of fees; the responsibility for enforcement; the liabilities of the parties; the responsibility for obtaining and

maintaining insurance; the process for settling disputes; the duration of the contract; and the methods by which the contract can be amended or terminated.

- For example, a county in Western New York provides code enforcement services to 16 Towns and 8 Villages in the county. The service agreement provides that applicants apply to their own local government (Town or Village) for the required permits; however, a single staff of inspectors, employed by the county, serves all 24 local governments. In order to facilitate scheduling of inspections by the county's staff, applicants are required to request inspections at least 24 hours in advance.
- These features may or may not be appropriate in other circumstances; however, this agreement provides examples of some, but not all, of the types of issues to be covered in a service agreement between a county and local government(s) in the county.

Local governments and counties considering a service agreement should consider forming a joint survey committee to study and plan the available alternatives.⁸ While not required, a study and analysis of the administrative, fiscal, legal and political considerations incidental to cooperative code enforcement will be facilitated by the formation and use of an appropriate joint survey committee.

Before a service agreement is executed by the parties, it must be approved by each participating local government by a majority vote of the voting strength of its governing body, and by the county by a majority vote of the voting strength of its governing body.

A sample service agreement is provided in Appendix One. The sample agreement is illustrative only, and may not be appropriate in every situation. **Under no circumstances should the sample agreement, or any provision in the sample agreement, be used without consultation by each party with its attorney.**

Additional information relating to cooperative activities, as well as illustrative contract clauses, can be found in *Intergovernmental Cooperation*, a publication in the Department of State's James A. Coon Local government Technical Series. This publication is available at the Department's website at [http://www.dos.state.ny.us/lg/publications/Intergovernmental Cooperation.pdf](http://www.dos.state.ny.us/lg/publications/Intergovernmental_Cooperation.pdf).

Joint Code Enforcement by Local Governments

A local government may determine that sharing code enforcement responsibilities with one or more other local governments will provide a cost effective means of code enforcement for each of the participating local governments. For example, if no participating local government, acting individually, requires a full time CEO, the participating local governments, when acting jointly, may be able to justify the hiring of one or more full-time CEOs, helping to ensure better coverage throughout the year and the availability of qualified code enforcement personnel.⁹ Similarly, local governments that share code enforcement responsibilities may be able to afford to hire additional staff, providing a broader range of expertise and permitting staff to specialize.

Local governments that wish to share code enforcement responsibilities can do so through an intermunicipal agreement. Both the Executive Law and the General Municipal Law provide great flexibility in structuring an intermunicipal code enforcement agreement that best serves the needs of the participating local governments.¹⁰

An intermunicipal agreement between or among local governments wishing to share code administration and enforcement duties can be a “service agreement” or a “joint agreement.”

- A “service agreement” is a formal written agreement between local governments in which one local government contracts with another to provide a service at a stated price.
- A “joint agreement” is a formal written agreement in which participating local governments agree to share in the performance of a function or the construction and operation of a facility. Such an agreement usually provides for significant participation by each of the local governments.

Such intermunicipal service agreements and intermunicipal joint agreements are authorized by Article 5-G of the General Municipal Law and Section 381(2) of the Executive Law.

When negotiating and drafting an intermunicipal service agreement under which one local government will provide code enforcement services to one or more other local governments, it is necessary to consider issues such as: the nature and scope of the services to be rendered by the local government that will be providing the services; the functions (if any) to be performed by the other local government(s); the number and qualifications of staff to be provided by each of the participating local governments; how personnel costs (salaries, insurance, workers’ compensation, retirement, training costs, etc.) and other costs will be shared or apportioned; the amount, times, and manner of charges; the collection and distribution of fees; the liabilities of the parties; the responsibility for obtaining and maintaining insurance; the process for settling disputes; the duration of the agreement; and the methods by which the agreement can be amended or terminated.

- For example, a Town and a Village in the Niagara Frontier have entered into an intermunicipal service agreement under which the Town’s CEO is a full-time employee of the Town, with the Town paying his/her salary, health insurance, workers compensation, and retirement contributions. The CEO works 6 hours per week in the Village, and the Village

pays the Town a stated portion of the CEO's salary and benefits. Permit applications and all other code-related paperwork is submitted to and processed by the Town. The Town provides the vehicle used by the CEO, and bills the Village periodically for milage used while working on Village matters.

- These features may or may not be appropriate in other circumstances; however, this agreement provides examples of some, but not all, of the types of issues to be covered in an intermunicipal service agreement.

When negotiating and drafting an intermunicipal joint agreement under which two or more local governments will jointly operate a code enforcement program, it is necessary to consider issues such as: how the joint program is to be governed (joint agreements often provide for significant participation by each participating local government); how the joint program is to be staffed; how personnel costs (salaries, insurance, workers' compensation, retirement, training costs, etc.) and other costs will be shared or apportioned; the amount, times, and manner of charges; the collection and distribution of fees; the liabilities of the parties; the responsibility for obtaining and maintaining insurance; the process for settling disputes; the duration of the agreement; and the methods by which the agreement can be amended or terminated.

- For example, six local governments (five towns and one village) in Allegheny County have entered into an intermunicipal joint agreement that establishes a single code enforcement department that serves all of the participating local governments. A single budget is established, with each participating local government contributing pro-rata, based on the number of assessable parcels in the local government. The participating local governments jointly select a code enforcement officer, and each local government is deemed to be an employer of the code enforcement officer for a percentage of the hours he or she works. One of the participating local governments is designated as being responsible for maintaining records, and is reimbursed for its related expenses. Fees collected are credited to the local governments pro rata, based again on the number of assessable parcels, and not on the location where the fees are collected.
- Again, these features may or may not be appropriate in other circumstances; however, this agreement provides examples of some, but not all, of the types of issues to be covered in an intermunicipal joint agreement.

Local governments considering either an intermunicipal service agreement or an intermunicipal joint agreement for code enforcement should consider forming a joint survey committee to study and plan the available alternatives.¹¹ A study and analysis of the administrative, fiscal, legal and political considerations incidental to cooperative code enforcement will be facilitated by the formation and use of an appropriate joint survey committee.

Before an intermunicipal service agreement or an intermunicipal joint agreement is executed, it must be approved by each participating local government by a majority vote of the voting strength of its governing body.

A sample intermunicipal joint agreement relating to code enforcement is provided in Appendix Two. The sample agreement is based on the Allegany County agreement discussed above. The sample agreement is illustrative only, and may not be appropriate in every situation. **Under no circumstances should the sample agreement, or any provision in the sample agreement, be used without consultation by each party with its attorney.**

Additional information relating to cooperative activities, as well as illustrative contract clauses, can be found in *Intergovernmental Cooperation*, a publication in the Department of State's James A. Coon Local government Technical Series. This publication is available at the Department's website at http://www.dos.state.ny.us/lg/publications/Intergovernmental_Cooperation.pdf.

Local governments considering an intermunicipal service agreement or joint agreement for code enforcement should consider residency issues relating to the CEOs to be used. As a general rule, a public officer, such as a CEO, must be a resident of the municipality in which he or she is acting.¹² However, according to an opinion of the State Comptroller, when acting under an intermunicipal agreement authorized by Article 5-G of the General Municipal Law, the public officer must meet the residency requirements of one of the participating municipalities.¹³

Each local government that enters into an intermunicipal service agreement or an intermunicipal joint agreement remains legally responsible for administration and enforcement of the Uniform Code and Energy Code within its boundaries. This means that:

- Each such local government is still required to enact an appropriate local law or ordinance establishing a code enforcement program that satisfies the requirements of Part 1203 of Title 19 of the New York Codes, Rules and Regulations.
- Each such program should identify the persons, offices, department, agencies, or combinations thereof, authorized to and responsible for any code-related function, and should identify the function or functions to be performed by each such person, office, department, agency or combination.
- The local government that employs the code enforcement personnel who will perform code-related functions under the agreement will be required to see to it that such code enforcement personnel have satisfied the applicable training requirements. Each local government that *receives* services is still required to determine to its own satisfaction that the code enforcement personnel have received the required training. The Department of State facilitates this process by posting a list of code enforcement personnel who are currently certified as having satisfied the training requirements on the Department's website at <http://www.dos.state.ny.us/code/certCEOlist.htm>.

Contract Services

As an alternative to the intermunicipal agreements described above, a local government may consider having some of its code-related duties performed by an independent, nongovernmental contractor.

The role of a contractor has specific legal limits which must be observed: Any exercise of sovereign governmental power, such as the issuance of permits, certificates of occupancy, stop work orders, and appearance tickets, the prosecution of code violations, and any other direct regulatory actions, must be performed by governmental officials, not by independent contractors.¹⁴ Therefore, a local government that engages an independent contractor for code-related activities will still be required to (1) designate a municipal official or department as the governmental entity responsible for administration and enforcement of the Uniform Code, and (2) enact an appropriate local law or ordinance establishing a code enforcement program. The program should identify the contractor and the functions to be performed by the contractor.

A local government that hires a nongovernmental contractor to perform code-related work is required to determine that the contractor has qualifications comparable to those of an individual who has met the initial training requirements and annual in-service training requirements applicable to code enforcement personnel.¹⁵

Conclusion

Local governments may find it advantageous to share code enforcement responsibilities with one or more other local governments and/or with the county in which they are located. Particularly in small communities and rural areas, shared code enforcement programs may permit the participating communities to employ full time CEOs and a larger staff, with a broader range of expertise and a greater degree of specialization, while at the same time maintaining a code enforcement program which is operated at a local or county level and which is most responsive to local conditions and priorities.

Endnotes

1. See Article 18 of the Executive Law. The Uniform Code establishes standards and requirements for construction and construction materials for public and private buildings. The Uniform Code is applicable in all parts of the State except New York City.
2. See Article 11 of the Energy Law. The Energy Code establishes standards and requirements for the construction and substantial renovation of buildings to minimize the consumption of energy and to provide for the efficient utilization of the energy expended in the use and occupancy of buildings. The Energy Code is applicable in all parts of the State, including New York City
3. Part 1203 of Title 19 of the New York Codes, Rules and Regulations.
4. Part 434 of Title 19 of the New York Codes, Rules and Regulations.
5. Such service agreements are authorized by section 381(2) of the Executive Law.
6. See Executive Law section 381(2).
7. See Executive Law section 381(2). As of the date of this publication, examples local governments that have opted out include: the Village of Cooperstown (in Otsego County), the Town of Lorraine (in Jefferson County), and the Town of Greenwich (in Washington County). Note that a local government that has opted out has the option of “opting back in” by repealing the local law under which it initially opted out. Examples of local governments that opted out in the past, and have since opted back in, include: the Town of Broome (in Schoharie County), the Village of Galway (in Saratoga County), and the Town of Benson (in Hamilton County).
8. Article 12-C of the General Municipal Law authorizes counties (outside New York City), cities, towns and/or villages, in any combination, to form such a committee.
9. General Municipal Law section 99-c provides that “(i)t shall be lawful for two or more municipal corporations to engage jointly one building inspector and make an agreement specifying how such inspector shall be paid for his services.”
10. See Executive Law section 381(2), General Municipal Law Article 5-G, and General Municipal Law section 99-c.
11. Article 12-C of the General Municipal Law authorizes cities, towns and/or villages, in any combination, to form joint survey committees.
12. See Public Officers Law §3, Town Law §23 and Village Law §3-300. There are numerous exceptions (special laws for individual municipalities) set forth in the cited statutes.

13. 19 Op. State Compt. 409 (1963).

14. See section 1203.2(e)(2) in Part 1203.

15. See 1203.2(e)(1) in Part 1203. Training requirements are specified in Part 434 of Title 19 of the NYCRR.