

Dear Association Presidents,

Yesterday afternoon, Acting Commissioner Richman met with representatives of the League of Municipalities. This meeting was requested by the League to discuss overtime charges and whether the Department would consider amending its rules to allow municipalities to incorporate overtime charges into municipal fee schedules.

During the meeting, the attached draft rule, prepared almost 12 years ago, was given to the League representatives. This is offered only as a starting point for discussion. It has not been updated or reviewed since it was written. As you will note, the attached draft covers only inspections. It would prohibit overtime charges if the municipal code enforcement agency is not staffed properly for its workload or if the agency is generating excess fees. The draft proposal also would require that the request for overtime inspections come from the applicant.

The draft, as far as it goes, attempts to respond to issues we were able to anticipate at that time. There were other issues we were unable to resolve, and so, the draft was not moved forward. These include how to deal with towns with part time code enforcement agencies, fairness to smaller applicants and homeowners, etc. Any proposal must include the imposition of reasonable limits to prevent abuse. These and other concerns which may be raised would have to be addressed in order for the Department to proceed with a proposal.

As we all know, the Uniform Construction Code Act calls for fees to cover the cost of code enforcement. This would include any overtime paid to code enforcement staff. The question on the table is whether a municipal fee schedule should be allowed to include an hourly rate for overtime or whether this is better addressed through the establishment of fees which cover these costs or the management of staff time or some combination thereof. We are sharing this and asking that the organizations you represent participate in this ongoing conversation. We would very much like to have the benefit of your thinking on this subject.

Regards,  
Amy Frank

## 5:23-4.18 Standards for municipal fees

(a) – (l) (No change.)

**(m) Fee for overtime:**

**The municipality may establish a fee to cover the cost of overtime whenever an applicant makes a request in writing that an inspection be performed outside normal business hours in order to meet the specific scheduling requirements of a project.**

**1. For purposes of applying this section, normal business hours shall be considered to be 7am to 5pm Monday through Friday, excluding holidays.**

**2. Any such fee shall be a dollar amount per hour based on the overtime rate of pay of the inspector performing the work with standard fringe included, and any portion of an hour shall be rounded up.**

**3. No overtime fee shall be charged if:**

**i. Construction code enforcement income has exceeded expenses by more than 20 percent or more than \$100,000.00 over the last 3 years.**

**ii. The local enforcing agency has been found by the Department to be understaffed.**

- iii. The local enforcing agency regularly exceeds the time frame established at N.J.A.C. 5:23-2.18(c) for performing inspections.**
- 4. Any such fee may require the deposit of an escrow sufficient, in the sole judgment of the enforcing agency, to cover the estimated work of the requested inspections.**
- 5. The agency shall maintain detailed time records for any such overtime inspections, which shall be made available to the applicant upon request.**
- 6. For inspections that are performed by a third party agency, the agency may be compensated at the municipality's established overtime rate.**
- 7. Projects that are otherwise exempt from fees may be subject to the overtime fee if an inspection is requested in writing pursuant to this section.**
- 8. An emergency inspection pursuant to N.J.A.C. 5:23-2.14(b)3. or inspections outside normal business hours necessitated by a disaster shall not be subject to an overtime fee.**
- 9. No overtime fee shall be charged for construction taking place more than ten hours per day or where the nature of the work requires inspection outside normal business hours.**