



Town of Wells
Code Enforcement Office
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MEMORANDUM

Date: June 3, 2019
To: Jon Carter, Town Manager
From: Jodine Adams, Code Enforcement Officer
RE: Licensing Inspections

Current Procedure

A new business license/change of ownership prompts the Code Office and Fire Department to perform a basic life safety inspection and look for the following: smoke/carbon monoxide detectors, fire extinguishers, egress lighting. If a sprinkler system and fire alarm system exist we confirm it has inspected and tested by the Sprinkler Company and alarm companies. The required egress areas are verified for clear of debris. The inspectors confirm that all decks and stairs and handrails are safe.

Options Moving Forward

1. Enforce all the current inspection requirements as outlined in 150
2. Re-evaluate all the current inspection requirements outlined in 150. *Highly Recommended*
Scale down required inspections
3. The Code Office could sign the business license insuring the use is allowed in the district and has had all necessary permitting. An inspection will only be prompted with a building permit.
4. The Town could consider hiring a 3rd party inspector to perform courtesy inspections on all businesses on rotating bases using the current procedure guidelines. Basic life-safety. Fess structure of licensing will cover the cost
5. The Town could continue with the current inspection procedure outlined above inspecting new and change of ownership businesses only.
6. The licensing word could be changed to a "registration fee" if the Town chooses not to do inspections. The Town will still be able to track businesses for emergency purposes based on the current fees'. The most common fee of \$10.00 does not cover the administrative costs but would be justifiable as a registration fee.
7. Currently many businesses refuse to apply for business licenses. The Town should consider a more aggressive approach to be fair to all businesses if it wants to continue with licensing.

Other Considerations

Does the Town want to consider licensing rental units/properties for the same life safety requirements as we are doing as a “basic life safety inspections” for businesses?

- The Code Enforcement Office knows that there are illegal units in Town that do not meet zoning and we address them as we find out about them. But does the Town want to insure that the guests that come to stay/live in Wells that do not own the property have the expectation that the unit meets basic life safety? This would be achieved through licensing and inspections.

Does the Town want to require all living units to have a minimum of 5 or 7 day rental time?

Air B&B could become problematic. The Code Enforcement Office & Planning Office does not support nightly rentals in dwelling units for the following reasons:

- Neighborhoods have an expectation of weekly and/or seasonal rentals and this intensifies the use to a lodging facility. Air B&B changes the dynamic of the neighborhood to have more of a transit activity of guests.
- Citizens are asking to build second dwelling units and accessory dwelling units on their properties to rent out nightly.
- Allowing this type of activity has the potential of making the properties west of the turnpike more transit

A dwelling unit is not intended to be a nightly rental unit. However, the zoning ordinance does not currently state a timeframe of occupancy for a dwelling unit to be considered something else, such as a “lodging unit”.

If the Town wants to follow the current inspection requirements or define other inspection requirements for business and rentals they should be prepared for a tough couple of years with complaints because of new enforcement that has not been done before and they have to be prepared to trust that Staff is doing the right thing and not overstepping its authority. Basic life safety.

Memorandum

TO: LBR
FROM: BTM
DATE: October 11, 2018
Re: Town of Wells (980005.285) –
Municipal Licensing Inspection Responsibilities

The Town of Wells (the “Town”) has asked us to determine the extent of municipal licensing inspection responsibilities under state law. The Town wants to know whether it is required to conduct inspections at regular intervals, *i.e.*, every year, or whether the extent of municipal responsibilities is tied to the initial granting of a particular permit, *e.g.* prior to granting a certificate of occupancy for a completed building project, or as part of a business’s application for a renewal of a previously-granted license. These circumstances are hereinafter referred to as “Licensing Events.”

This memorandum is based on research and review of: (1) the Maine Uniform Building and Energy Code (“MUBEC”) as enacted through 2015; (2) NFPA 101; (3) Maine Revised Statutes Annotated; and the Town of Wells Code of Ordinances (the “Code”).

MUBEC

MUBEC is comprised of four separate manuals, the International Building Code (“IBC”), the International Residential Code (“IRC”), the International Existing Buildings Code (“IEBC”) and the International Energy Conservation Code (“IECC”). Each code has an individual section entitled “Inspections,” which outlines the basic inspection requirements for enacting municipalities.

In general, all four codes have parallel requirements. First, the individual tasked with enforcing the code (referred to by different titles in each code) is required to conduct several “required inspections.”¹ These inspections are all performed to ensure that the scope of work authorized by the building permit has been completed properly. Secondly, all four codes authorize the enforcement official to conduct “other inspections” to ensure compliance with any other applicable state law or local ordinance.

¹ IECC § C105.2: “footing and foundation insulation, thermal envelope, plumbing system, mechanical system, electrical system, and final inspection.”

IRC § 109.1: “foundation inspection, plumbing, mechanical, gas and electrical systems inspection, floodplain inspections, frame and masonry inspection and final inspections.”

IEBC § 109.3: “footing or foundation inspection, concrete slab or under-floor inspection, lowest floor elevation, frame inspection, lath or gypsum board inspection, fire and smoke-resistant penetrations inspection and final inspection.”

IBC § 110.3: “footing and foundation inspection, concrete slab and under-floor inspection, lowest floor elevation, frame inspection, lath, gypsum board and gypsum panel product inspection, fire and smoke-resistant penetrations, energy efficiency inspections, final inspection.”

However, none of the four codes require additional, regular inspections for properties that have already received a final inspection and certificate of occupancy. It follows that unless and until a property owner seeks new authorization to construct an addition or other building, the Town does not have subsequent responsibilities to inspect.

NFPA 101

NFPA 101 does not include a specific inspection section similar to MUBEC – and does not include specific requirements for inspections as part of the general administration section. *See NFPA 101 § 1.6* (“This Code shall be administered and enforced by the authority having jurisdiction as designated by the governing authority.”).

However, certain NFPA sections do include inspection checklists and other helpful guides to ensure that the AHJ properly inspects a building prior to final approval.

Beyond these checklists, NFPA does not include any requirement for re-inspection of a building unless and until an improvement or other change to a previously-inspected building is proposed, or in the case of mass gatherings or human service providers, discussed below, a license renewal is required.

State Law

A comprehensive search of the Maine Revised Statutes indicates a number of situations where municipalities have (or may choose to have) inspection responsibilities for certain businesses or activities.²

Furthermore, in situations where the Town is tasked with stepping into the shoes of the state in enforcing the provisions of NFPA 101, inspections may be required prior to the annual renewal of a

² *See, e.g.*: 22 M.R.S.A. § 2499 (allowing municipal inspection of campgrounds, summer camps, and eating establishments in lieu of inspection by the Department of Health and Human Services);

5 M.R.S.A. § 4594, *et seq.* (requiring municipalities to inspect newly constructed or altered buildings for compliance with the Maine Human Rights Act);

30-A M.R.S.A. § 3105 (allowing municipalities to take responsibility for inspecting and approving small borrow pits);

25 M.R.S.A. §§ 2353, 2354 (requiring the building official designated by the municipality to inspect all buildings that have been newly constructed or renovated or repaired for compliance with NFPA 1 and NFPA 101);

30-A M.R.S.A. § 3703 (generally allowing municipalities to enact business licensing ordinances, within which inspections may be required);

23 M.R.S.A. § 3272 (requiring *periodic inspection* of marked barriers lying within a town way);

12 M.R.S.A. § 9325 (granting municipalities the authority to grant and require open burning permits).

business's license. For example, 22 M.R.S.A. § 8605 requires an annual inspection of an adult daycare facility prior to relicensure, and 22 M.R.S.A. § 8304-A requires at least a biennial inspection of a child care center for fire and life safety compliance.³

However, beyond these limited exceptions, state law does not require the regular inspection of any business unless and until that business is required to apply for a license renewal. Thus, any additional inspection requirements are imposed solely at the discretion of the Town.

Town Code

Inspections are required in various contexts within the Town Code. Most generally, the municipal officers are authorized to grant licenses “for the businesses and purposes specified herein . . .” and require inspections as part of any licensing process. *Town Code* § 150-2. Leaving aside inspections prior to the granting of a certificate of occupancy, the Town Code requires inspections in the following contexts:

- Body piercing and tattoo parlors, which *may be* periodic. § 150-145;
- Prior to granting a special amusement permit. These inspections are required only to the extent necessary to ensure compliance with the Town Code. § 150-61;
- Inspections for required improvements in a subdivision. § 202-11.
- Constructed streets and sidewalks – the Road Commissioner is tasked with making periodic inspections during construction and then final inspection prior to acceptance by the Town. § 201-12.
- The police chief and fire chief are tasked with inspecting any newly-installed alarm system. § 150-46(E).
- The Harbor Master is required to inspect all public dock moorings *at least once a year*. § 124-14.
- Records of a lodging facility *may* be inspected by the Code Enforcement Officer to ensure compliance with the Town Code. § 150-83(D).

Excepting requirements related to public docks above, the Town Code does not include any requirement for regular inspection of any business or property, unless and until a business is required to apply for a renewal of a previously-granted license, and an inspection is an express requirement of the licensing process, *e.g.*, places of public gathering, and adult/child care centers. Furthermore, as discussed above, the Town does not have an affirmative duty to inspect a business during a licensing procedure unless the Selectmen decide to require such inspection, or unless state law so provides.

³ Based upon the table of licensing included in Section 150, it appears that the Town and the State perform the same inspection each year.

Conclusion

To the best of our knowledge, no state law or municipal ordinance requires the Town of Wells to conduct inspections more regularly than before each Licensing Event. As such, the Town would be well-advised to analyze its existing requirements for inspections, particularly in cases where a “courtesy” inspection is allowed. Because a failure to inspect, even if such an inspection was allowed as a courtesy, could give rise to potential legal claims that the Town would be forced to defend, eliminating the program altogether is advisable.⁴ Further changes to the Town Code’s licensing and inspection provisions should also be considered if the Board of Selectmen so choose.

⁴ Arguably, the Town is immune from any tort claim arising from the Town’s failure to perform a “courtesy” inspection, as such an inspection would be discretionary in nature. *See* 14 M.R.S.A. § 8104-B(3). However, eliminating provisions for courtesy inspections altogether could help eliminate the possibility that any suits would arise, thereby defraying possible legal and other expenses.