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Sent Via Electronic and Regular Mail

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**RE: PRN 2017-206 with Notice of Administrative Correction
New Jersey Uniform Fire Code
Readoption of N.J.A.C. 5:70 with Amendments
Adoption of 2015 International Fire Code with Amendments**

Dear Ms. Asher,

The New Jersey Apartment Association (“NJAA”) submits these comments on the above referenced proposal, in which the Department of Community Affairs (“DCA” or “Department”) proposes to readopt N.J.A.C. 5:70 with amendments, adopt the 2015 International Fire Code with amendments as the New Jersey Fire Prevention Code (Subchapter 3), which governs maintenance requirements, and amend the New Jersey Fire Safety Code (Subchapter 4), which imposes retrofit requirements on certain buildings.

The NJAA is an association of owners, managers, and developers of more than 200,000 apartment homes formed to represent the interests of the multifamily housing industry in New Jersey. One in three New Jersey families rent an apartment and more than one million of our state’s residents live in professionally managed rental housing.

NJAA retained Marshall A. Klein & Associates, Inc., to conduct a review of the proposed amendments to the New Jersey Uniform Fire Code. The enclosed report, prepared by Marshall A. Klein, PE, FSFPE, includes comments that we believe would strengthen this proposal and we respectfully ask that they be addressed in the final adoption in addition to the comments below.

At the most basic level, this proposal would update the current State Fire Prevention Code from the 2006 International Fire Code with amendments (“2006 IFC”) to the 2015 International Fire Code (“2015 IFC”) with amendments, which would be effective January 1, 2018. The International Fire Code is the leading model code in the United States and, by adopting the 2015 IFC, New Jersey’s principal fire code would be in better alignment with the state building codes, which are currently using the 2015 editions, and would reflect the latest fire safety technologies and understanding of best fire safety practices. While we do have some concerns with specific



provisions that we outline in these comments, NJAA supports the adoption of the 2015 IFC as the State Fire Prevention Code.

At the same time, the proposal would also make changes to New Jersey's Fire Safety Code, which imposes retrofit requirements mostly on buildings constructed prior to the adoption of the statewide Uniform Construction Code. Given that it is a retrofit code, even minor changes to the code can impose significant costs on owners of such buildings who must then bring those buildings into compliance with the altered code. As such, as a general principle, we ask the Department to be cautious about making changes to the retrofit code that could bring existing buildings out of compliance. Such changes should only be made when addressing critical life safety needs and only after careful study of the issues and the economic effect of the proposed remedy.

It is against this backdrop that the NJAA makes the following comments:

604.6 Emergency Lighting; Power Test

This provision has been interpreted in other jurisdictions as requiring power to be cut to the building in order to test the emergency lighting. Understandably, residents become upset with recurring monthly interruptions in power. Accordingly, the ICC has approved language that would clarify these testing requirements.

Please see the enclosed comments from Marshall Klein for our suggested alternative language.

907.11 Testing of Single Station Smoke Detectors

907.11.1 would require monthly testing of non-battery operated single station smoke detectors/alarms and weekly testing of battery operated single station smoke detectors/alarms. A log of such testing would be required to be maintained for all but R-3 occupancies. 907.11.2 would require that owners conduct annual cleaning of battery operated smoke detectors/alarms and replace batteries as necessary, but at least once a year. For large apartment communities, requiring weekly or monthly smoke alarm/detector tests in occupied apartments would be a very onerous requirement for apartment owners and would require a significant intrusion into residents' apartments that many residents would deem unacceptable. Furthermore, apartment owners cannot enter apartments without the consent of their tenants, which would be difficult to obtain for weekly tests.

We would respectfully request that 907.11.1 be deleted in its entirety and that an exception be provided in 907.11.2 for units where 10-year sealed battery smoke alarms have been installed.

Please see the enclosed comments from Marshall Klein for further information on these sections.



Sealed 10-Year Battery Smoke Alarms

The proposed rule, as amended by the Notice of Administrative Correction published on October 2, 2017, would require buildings of use group R-1, R-2, and R-3 that are subject to the Fire Safety Code to *immediately* replace single-station smoke alarms with alarms that contain sealed 10-year lithium ion batteries. These alarms are designed to operate on a sealed battery for 10-years, which is the functional life of a smoke alarm, and would then need to be replaced.

NJAA is supportive of transitioning battery operated single station smoke alarms to 10-year sealed battery technology; however, we respectfully request that the requirement (1) be phased-in as current smoke alarms are replaced or new smoke alarms are added, (2) be limited to battery-only devices, and (3) that exemptions be provided for other life safety technologies that are not currently supported by 10-year sealed batteries, such as alarms for the hearing impaired, ‘smart’ smoke alarms, or low-frequency alarms.

(1) Phasing In 10-Year Sealed Detectors

We respectfully request that the DCA phase in the requirement to replace removable battery smoke alarms with 10-year sealed smoke alarms as current smoke alarms are replaced or new smoke alarms are added. Since smoke alarms have a ten-year lifespan, providing this phase-in period would mean that all alarms would be of the 10-year sealed type within a decade of adoption. This would be consistent with the language that was originally proposed in PRN 2017-206, rather than the alternative language proposed in the Notice of Administrative Correction.

It is important to note that of the six states that have passed statewide laws or regulations transitioning to 10-year sealed batteries, all of these states phased in the mandate. Five states, Oregon, California, Georgia, North Carolina, and New York, phased in the mandate upon replacement (with some doing it as a sale ban on non-10-year alarms) and one state, Maryland, provided a five-year phase-in period.

The current proposal, by not providing a phase-in period, would require owners to discard and replace hundreds of thousands of working smoke alarms upon adoption of this proposal and purchase new alarms, yet there is nothing to suggest that phasing in this requirement would be detrimental to the safety of occupants. Furthermore, a sudden spike in demand for smoke alarms generated by a sweeping mandate with no phase-in period, or an insufficient phase-in period, could create a regulatory compliance problem due to a shortage of inventory.

(2) Hard Wired AC Powered Alarms with Battery Backup

The Notice of Administrative Correction would amend 5:70-4.9(a)(3)(v) to state that “approved 10-year sealed battery-powered single station alarms *shall* be installed” (emphasis added). While the original requirement permitted the use of battery operated smoke alarms as an option in lieu of requiring the alarms to be connected to AC power,



this provision would seem to require battery-powered alarms even where AC powered alarms are currently present. Given that the preferred solution is to provide AC powered smoke alarms with a battery backup, we do not believe that this is the DCA's intent, and we ask that the language be clarified upon adoption to make clear that battery operated alarms continue to be an option in lieu of AC powered alarms.

Additionally, while the original proposal required 10-year sealed battery powered smoke alarms when replacing "similar battery-powered single station smoke alarms" the revised text in the Notice of Administrative Correction would include the mandate for *all* smoke alarms. Provided that DCA allows the continued use of AC powered alarms with a battery backup requested in the above comment, we would request that the requirement to install 10-year sealed battery smoke alarms be limited to where battery power is the primary source, and not the backup source. Hardwired detectors already have safeguards against tampering and provide a warning when the battery becomes low. Also, if a resident were to go through the trouble of disconnecting a hardwired smoke alarm, it would be likely that the resident would be just as likely to remove a 10-year sealed battery powered smoke alarm. As such, for hardwired single station alarms, detectors with 10-year sealed backup batteries provide no additional life safety benefit over conventional equipment.

(3) Provide an Exemption for Devices for Hearing Impaired or Other Technologies

While 10-year sealed single station smoke alarms may be the preferred technology in many common applications, we are concerned that mandating this technology may preclude owners from utilizing technologies, such as wireless systems, 'smart' alarms, or low-frequency alarms, which might offer benefits in certain applications. Additionally, NJAA is not aware of any smoke alarms for the deaf or hearing impaired that operate on 10-year sealed batteries. As such, we would request an exemption from this requirement be provided for alarms for the deaf or hearing impaired and an exemption be provided that would allow owners to utilize technologies where 10-year sealed batteries are not available.

Smoke Barriers and Fire Doors

Currently, smoke barriers and fire doors are required to be self-closing or automatic closing. This proposal would require smoke barriers and fire doors to be both self-closing and self-latching. As such, doors that are not currently self-latching would need to be replaced or retrofitted, and retrofitting fire-rated doors and barriers would not be a straightforward task.

This change would impact smoke barriers, vertical opening protectives or shafts, and egress doors. While many of these doors and barriers are self-latching, many are not, yet we are not aware of a record of these doors failing in cases of fire, despite the buildings subject to these code requirements being more than 50 years old. In fact, the opposite is true: We have examples of self-closing, but not self-latching, doors and fire barriers performing well during fires.



We respectfully request that the amendments adding “self-latching” doors and barriers be removed from the proposal upon adoption as further study is required to support such a change.

Prior to adopting such a retrofit requirement, DCA should study the number of doors that would be effected, the performance of these doors and barriers in fires, and the anticipated cost of this new retrofit requirement. Such an analysis is not only prudent, it is necessary under N.J.S.A. 52:27D-198, which requires DCA to “take into account, to the greatest extent prudent, the economic consequences of the regulation” and to study the “varying degrees of fire safety provided by the different types of construction of existing buildings and the varying degrees of hazard associated with the different types and intensity of uses in existing buildings.”

We appreciate the Department’s consideration of these comments and the attached report. We appreciate the Department’s open dialog with the regulated community and hope to meet with representatives of the Department to discuss this rule proposal and our comments to it.

Very truly yours,

Nicholas J. Kikis
Vice President
Legislative & Regulatory Affairs

Enclosures (1)

The New Jersey Apartment Association represents over 600 multifamily rental housing providers throughout the State of New Jersey. We are a statewide organization dedicated to maintaining, improving, and building market-rate and affordable rental housing, which serves one in three New Jersey residents.