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CLEARINGHOUSE RULE 00-159

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Section 101.65 in part provides that a city, village, town or county may exercise jurisdiction over the construction and inspection of new dwellings by passage of ordinances that are adopted in accordance with the statutes. Section Comm 21.06 (1) (a) 1. generally provides that a city, village or town *shall* exercise jurisdiction over the construction and inspection of new dwellings. What statutory authority exists for imposing this mandate on cities, villages and towns? (If such statutory authority exists, why are counties excluded from the mandate?) With the exception of a city, village or town having a population of 2,500 or less, it appears that the department is relinquishing any authority to exercise jurisdiction over the construction and inspection of new dwellings under the one- and 2-dwelling code.

b. Section Comm 20.06 (1) (c) 1. b. provides that the department must review and make a determination “regarding municipal intent” to exercise jurisdiction under the Uniform Dwelling Code. Section Comm 20.06 (1) (c) 1. c. provides for a municipal appeal of the department’s determination. Sections 101.65 and 101.651, Stats., do not include authorization for the department to make such a determination, and neither the statute nor the rule provides any standard for the department to make this decision. Is there statutory authority for this provision?

2. Form, Style and Placement in Administrative Code

a. The treatment of s. Comm 2.34 (2) in SECS. 2 and 3 should repeal and recreate that subsection. Following the repeal and recreation of sub. (2), sub. (3) can be repealed.

b. The term “UDC” is used in s. Comm 5.635 and several places in ch. Comm 20, but this term is not defined.

c. “Person” should be retained and “business or entity” should be deleted in s. Comm 5.635 (1). See s. 227.27, Stats., referencing the definition of “person” in s. 990.01 (26), Stats.

d. Section Comm 5.635 (4) (a) refers to “appropriately certified persons.” Does this refer to certification under s. Comm 5.63? If so, a cross-reference should be included.

e. Section Comm 5.635 (4) (e) includes a reference to “all procedures established by the department for UDC enforcement.” Any procedures that include policies meeting the definition of the term “rule” contained in s. 227.01 (13), Stats., should be placed in the administrative code. [See also s. Comm 20.06 (1) (a) 3.]

f. The phrase “Uniform Dwelling Code” is used in s. Comm 20.06 (1) (a) 2. and several other places in ch. Comm 20. This term is not defined in s. Comm 20.07. The term “code” is used in reference to the Wisconsin Uniform Dwelling Code. It is preferable to use the defined term.

g. In s. Comm 20.06 (1) (c) 3., the notation “subds.” should be replaced by the notation “subd.”, because of the following use of the disjunctive word “or.”

h. Section Comm 20.06 (3) provides that department jurisdiction includes manufactured buildings used as dwellings. A separate manufactured building code is established under subch. III of ch. 101, Stats., and manufactured buildings are governed by ch. Comm 27. Why are manufactured buildings mentioned in ch. Comm 20?

i. Section Comm 20.08 (1) (b) 1. repeats the exemption provided in s. Comm 20.05 (3). Is it necessary to restate this exemption?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section Comm 5.635 (1) provides that no person may engage in plan review, building permit issuance or inspection unless the person is registered with the department. With this regulatory requirement, the phrase “UDC inspection agency” can be used throughout ch. Comm 20, and “registered” can be omitted.

b. Section Comm 5.635 (1) requires registration “where the department has jurisdiction pursuant to s. 101.651 (3) (b), Stats.” Should the same requirement for registration apply to inspections done by contract with the department under s. 101.65 (2), Stats., and in any circumstance where a county or municipality contracts for these services?

c. The last phrase in s. Comm 5.635 (1), following “unless,” could be simplified as follows: “unless the person obtains a registration from the department as a UDC inspection agency.”

d. “Their” should be replaced by “the” in s. Comm 5.635 (4) (b).

e. Section Comm 5.635 (4) (c) requires that *all* inspections under s. Comm 20.10 be conducted by a registered UDC inspection agency. However, it appears that municipalities may conduct some of the inspections required under s. Comm 20.10. Is “all” correct?

f. The prohibition in s. Comm 20.06 (1) (a) 3. should be rewritten. By prohibiting additional requirements “within the scope of the code,” it implies that additional requirements not within the scope of the code may be adopted.

g. Section Comm 20.06 (1) (c) 2. requires municipalities that adopt a resolution under s. 101.651 (2m), Stats., to file a copy of the resolution with the department. The resolution under s. 101.651 (2m) (a), Stats., involves the municipality requesting the county to enforce the Uniform Dwelling Code. Should the county also be required to respond to the municipal request and notify the department of its response?

h. Section Comm 20.08 (1) (a) is written in the passive voice. Chapter Comm 20 does not appear to state who is required or authorized to obtain the building permit.

i. Section Comm 20.08 (1) (b) 2., provides that a Wisconsin Uniform Building Permit is not required in a municipality which exercises the option to decline any administration and enforcement under s. 101.65 (1) (2m) b, Stats. Is it accurate to indicate that a permit will never be needed in such a circumstance?

j. Section Comm 20.09 (2) (a) 1. refers to certain actions that are required for new dwelling construction. Section Comm 20.04 applies the Uniform Dwelling Code to certain construction other than new dwelling construction. Are these other kinds of construction meant to be excluded in s. Comm 20.09 (2) (a) 1.?

k. The three requirements related to building permit seals in s. Comm 20.09 (3) (a) 2., (b) and (c) appear to create a requirement to obtain three seals for the same dwelling. Is this the intent?