Learning Objectives

- Understand the legal basis for the Minnesota State Fire Code (MSFC)
- Identify the legal authority for fire code enforcement
- Discuss applicability of the MSFC
- Discuss local fire code modifications
- Review administrative provisions of the MSFC
Legal Issues
Order of Authority – “Waterfall” of Regulations

- Federal Laws
- State Statutes
- Local Ordinances
- MN Rules (State Amendments)
- Minnesota State Fire Code
- Minnesota State Fire Code Standards
Federal Law Preemption

- There are few federal laws dealing directly with fire and life safety
- Most federally-owned property is exempt from compliance with state and local laws and ordinances:
  - What do you have that is federally-owned in your community?
  - What if privately owned but leased by federal agencies?
Federal Law Preemption

• Certain activities that operate under federal laws or rules:
  – Hazardous materials (in transportation)
  – Railroads
  – Health care facilities receiving Medicare/Medicaid money
• Certain tribal lands (can get complicated)
Laws in Minnesota developed in one of two ways:

- Statutory (i.e. Minnesota Statutes)
- Rule-making (i.e. Minnesota Rules)

Both have the force of “law” once adopted
• Laws that are passed by the Minnesota Legislature
• Must pass both “houses” of the Legislature
• Signed by Governor
• Authority to adopt rules comes from legislature
• Pursuant to the Administrative Procedures Act (APA)
• The APA is a lengthy and cumbersome
• The APA requires extensive public input
• APA is frequently modified
• Modifications have made the process more difficult
Fire & Building Code Rules

• Fire & building codes are adopted by rulemaking
• Most agency rules are written “from scratch”
• Building and fire codes start with model code
• Very length process – multiple steps
State Statutes

Related to Fire Codes and Inspections
Statutes That Impact Fire Code Enforcement

- 299F.011, subd. 4a – Day Care Home Regulations
- 299F.011, subd. 4b – Stairway Enclosure in Existing Apartment Buildings
- 299F.011, subds. 5, 5a, & 5b – Fire Code Variances
- 299F.011, subd. 6 – Code Violations are Misdemeanor
- 299F.013 – Fuel Dispensing
- 299F.014 – Tank Vehicle Parking
- 299F.30 – Fire Drills in Schools
Statutes That Impact Fire Code Enforcement

- 299F.362 – Smoke Detectors
- 299F.51 – Carbon Monoxide Detectors
- 299F.48 – High-Rise Public Housing Sprinkler
- 326B.108 – Places of Public Accommodation
- 144G.45 – Assisted Living Facilities
- 144G.81 – Assisted Living With Dementia Care
- 88.171 – Open Burning Prohibitions
- 13.44 – Identity of Complainants & Data Practices
- 504B.211 – Landlord / tenant rights
Local Amendments – MN Stat. 299F.011, Subd. 4

- State fire code is applicable throughout Minnesota
- Local jurisdiction can modify provided it:
  - Prescribes equal or more restrictive requirements
  - Is related to fire and life safety
  - Is done by ordinance
  - Is not more restrictive than applicable requirements of the state building code
Appeal Process – MN Stat. 299F.011, Subd. 5

- Fire code orders are appealable
- Appeals must be heard within 60 days
  - **Local appeals:**
    o Local governing board action first
    o Can appeal to State Fire Marshal
  - **State Fire Marshal appeals**
    o Substantial compliance
    o Life safety
    o Undue hardship
    o Affordable housing
Terminologies

- Appeal – challenge to a previously-made determination
- Variance – request to deviate from the code requirements
- Interpretation – determining the intended meaning and application of the code
- Time extension – request for additional time to comply with the fire code orders or requirements
Day Care Homes – MN Stat. 299F.011, Subd. 4a

- Prohibits fire marshal from adopting rules that:
  - Establish staff ratios etc.
  - Means of egress rules more than single family dwellings
  - Restricting care to level of exit discharge
  - Still allows DHS to adopt some rules
• Cannot require stairway enclosure in:
  - **Existing apartment buildings**
    - Existing means built prior to 4/11/1983
  - **Two stories or less**
    - Uses former UBC definition of stories
    - UBC did not define a basement as a story
UBC Definition of Stories

- 2 stories with basement
- Cannot require stair enclosure

- 3 stories
- Stair enclosure is required
Apartment Stairways – MN Stat. 299F.011, Subd. 4b

- Cannot require stair enclosure – UBC 2 stories
- Can require stair enclosure – 3 stories
Misdemeanor – MN Stat. 299F.011, Subd. 6

- Fire code violations are misdemeanors
- Fire code orders must:
  - Be given in writing
  - Allow a reasonable time to comply
  - State that there is a right to appeal
An inspection was conducted on January 20, 2022 for the purposes of fire and life safety. At the time of the inspection, the following conditions were observed that represent violations of the Minnesota State Fire Code (MSFC) adopted pursuant to Minn. Stat. 299F.011.

A follow-up inspection will be conducted on or soon after the “days to correct” listed below to determine if the conditions have been corrected. Failure to correct identified fire code violations is a misdemeanor. You have the right to appeal this order. Contact the person named below for more information.

<table>
<thead>
<tr>
<th>Item</th>
<th>MSFC Sec.</th>
<th>Days to Correct</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1030.2</td>
<td>Immediately</td>
<td>Remove obstruction from exit door – rear exit</td>
</tr>
<tr>
<td>2</td>
<td>703.1</td>
<td>30</td>
<td>Repair damage to fire wall – boiler room</td>
</tr>
<tr>
<td>3</td>
<td>901.6</td>
<td>60</td>
<td>Conduct an inspection of the fire alarm system</td>
</tr>
</tbody>
</table>

Thank you for your attention to these important fire safety issues. If you have any questions or need additional information, please feel free to contact me at 320-765-4321.

Sincerely,
Guy Whitehelmet, Fire Chief
Fuel Dispensing – MN Stat. 299F.013

• Applies to operations not open to the public:
  – Resort dispensing for registered guests
  – Maintenance operations (lawn, snow, etc.)

• Using exterior above ground tanks

• Fire code must allow dispenser on or near AST of:
  – Class I liquid – one 560 gallon tank
  – Class II liquid – two 1000 gallon tanks

• All other separations still apply
Tank Vehicle Parking – MN Stat. 299F.014

- 2020 MSFC prohibits parking of tank vehicles within 500’ of residential areas, apartments, hotels, schools, hospitals and nursing homes

---HOWEVER---

- Statute allows for residential if parked at aboveground tank facility
Fire Drills in Schools – MN Stat. 299F.30

- MSFC requires monthly evacuation drills per Table 405.2
- Statute changed number of annual fire drills to five
- Statute also requires that doors remain unlocked during school hours
Smoke Detectors – MN Stat. 299F.362

• Smoke detectors (now called smoke alarms) required in:
  – Single family
  – Apartments
  – Hotels
  – Lodging houses

• Owner to provide and maintain
• Occupant to report non-functioning device
• For existing see MSFC 1103.8
Carbon Monoxide – MN Stat. 299F.51

• Carbon Monoxide (CO) alarms required in:
  – Single family dwellings
  – Apartments
• Owner responsible for installing and replacing
• Occupant responsible for maintaining and battery replacement
• Exemptions for apartment buildings:
  – Centralized alarm with CO detection
  – No sources of CO (all electric heat, etc.)
High-Rise Public Housing – MN Stat. 299F.48

- Must install sprinklers by August 1, 2033
- Uses definition of high rise building – story above 75’
- Applies to public housing only:
  - Low income
  - Federally funded
  - Publicly owned

- Changes sprinkler threshold:
  - IBC / IFC: 100 or more occupants
  - Statute: 300 or more occupants
• Must provide:
  – Smoke alarms
  – Fire extinguishers

• Must develop and maintain fire safety and evacuation plans:
  – Resident training (no evacuation drills)
  – Staff training including evacuation drills

• Must meet NFPA 101 – Board & Care (if 6 or more residents) – enforced by MDH
ALF with Dementia Care – MN Stat. 144G.81

• Must meet requirements for assisted living facilities in MN Stat. 144G.45:
  – Smoke alarms
  – Fire extinguishers
  – Fire safety and evacuation plans
• Must be sprinkler-protected by 8/1/2029
• Must meet NFPA 101 – Health Care Limited – enforced by MDH
Open Burning – MN Stat. 88.01 & 88.171

• Open burning allowed with permit
• Cannot burn:
  – Plastics, rubber, similar synthetic materials
  – Hazardous materials
  – Industrial waste
  – Garbage
  – Demolition debris
  – Salvage operations
  – Motor vehicles
Data Practices – MN Stat. 13.44

• Subd. 1 – Identities of complainants about property violations are confidential
• Subd. 2 – Code violation records from a government agency are public data:
  – Fire prevention code
  – Building code
  – Housing code
• Exceptions for criminal investigations, complainant ID, pending civil actions
Entry by landlord of residential property:
- Only for a reasonable business purpose
- Following good faith effort to give tenant reasonable notice of intent to enter

Reasonable business purpose includes:
- Maintenance work
- Inspections for fire, building, housing codes

Some exigent circumstance exceptions
Local Ordinances
Local Authority – MN Stat. 299F.011, Subd. 4

- Local jurisdiction can modify state fire code provided:
  - Equal or more restrictive
  - Related to fire safety
  - Uniform for each class of building
  - Adopted by ordinance
  - Not more restrictive then building code (mini-max code)
• Effective March 31, 2020
State Fire Code Standards

- MSFC Chapter 80 lists numerous standards related to fire and life safety
MSFC Chapter 1

Also known as the “Forgotten Chapter”
How to Identify What’s Changed

- Vertical lines (|) in the margin indicate new or revised text.
- In the Minnesota State Fire Code, vertical lines may indicate a state amendment.
- Arrows in the margin (← or →) indicate that a section, paragraph, exception, or table has been deleted.
How to Identify What’s Changed

- Grey boxes indicate SFMD policies, interpretations or intent.
Most of the code language is written in the objective
- “Shall”, “prohibited”, “minimum”, “maximum”

This language provides consistency of enforcement by removing ambiguity…however
- Objective language can still be open to interpretation
- “Reasonable”, “acceptable to the code official”, “approved”, “as required”
Fire Code Requirements

• Generally fall into one of these categories:
  – Technically-based
  – Performance-based
312.2 Posts. Guard posts shall comply with all of the following requirements:

1. Constructed of steel not less than 4 inches (102 mm) in diameter and concrete filled.
2. Spaced not more than 4 feet (1219 mm) between posts on center.
3. Set not less than 3 feet (914 mm) deep in a concrete footing of not less than a 15-inch (381 mm) diameter.
4. Set with the top of the posts not less than 3 feet (914 mm) above ground.
5. Located not less than 3 feet (914 mm) from the protected object.
• **310.2 Prohibited areas.** Smoking shall be prohibited where conditions are such as to make smoking a hazard, and in spaces where flammable or combustible materials are stored or handled.
Chapter 1 – Scope and Administration

• 101-Scope and General Requirements
• 102-Applicability
• 103-Department of Fire Prevention
• 104-General Authority and Responsibilities
• 105-Permits

• 106-Fees (Permits)
• 107-Inspections
• 108-Maintenance
• 109-Board of Appeals
• 110-Violations
• 111-Unsafe Buildings
• 112-Stop Work Orders
• 113-Service Utilities
The purpose of this code is to establish the minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection from the hazards of fire, explosion or hazardous conditions in new and existing buildings, structures and premise and to provide safety to the firefighters and emergency responders during emergency operations.
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MSFC Section 102

Applicability
Applicability – MSFC 102.1

• Construction and design features:
  – Structures, facilities and conditions arising after the adoption of this code
  – Existing structures, facilities and conditions when identified in specific sections of this code
  – Existing structures, facilities and conditions that, in the opinion of the code official, constitute a distinct hazard to life and property
Applicability – MSFC 102.1.1

- Existing building features and applications are to remain
- This assumes that the features:
  - Exceed the requirements for existing buildings
  - Are equal to or less than requirements for new buildings
- Addresses existing construction and design features such as fire-rated construction, fire sprinklers, fire alarms, etc.
Applicability – MSFC 102.1.1

- Second sentence allows protection features to be removed if they are no longer required by the codes (especially the building code)
- Intent is to not enforce requirements in existing buildings that are more restrictive than they are for new buildings
- Care must be taken as these features may exist for other reasons
Operational – MSFC 102.2

• Administrative, operational and maintenance provisions applies to:
  1. Conditions and operations that arise after the adoption of this code
  2. Existing conditions and operations
• MSFC 102.2.1 defines “operational” based on permit requirements in 105.6
Change in Use or Occupancy – MSFC 102.3

• Change in occupancy must comply with requirements for the proposed use and occupancy found in the:
  – MSFC
  – State existing building code (if applicable)
• Exception if fire and life safety risk is less for new use
• NOTE: occupancy and use are two different things
Application of the Building Code – MSFC 102.4

• New structures to comply with the state building code
• Other changes to comply with the state building code:
  – Alterations
  – Additions
  – Changes in use
  – Changes / modifications required by the MSFC
Application of the Residential Code – MSFC 102.5

- Minnesota Residential Code (MRC) governs the construction of homes and townhouses
- The following MSFC provisions also apply:
  - Premise identification
  - Fire apparatus access
  - Firefighting water supplies
  - Administrative, operational, and maintenance requirements
Historic Buildings – MSFC 102.6

- Historic buildings need not comply with the MSFC
- Must be designated as “historic”
- Requires development of a fire protection plan per NFPA 914 (see MSFC 1103.1.1 also)
National Register of Historic Places

• Website address:
  – Search by county
  – May be historic building or historic district
Numerous codes and standards are adopted as part of the state fire code (see MSFC Chapter 80)

Adopted only to the extent of each reference

Example: NFPA 101 (Life Safety Code) – 2018 edition is referenced in Chapter 80:
- NFPA 101 is only applicable per MSFC 1029.6.2 (smoke protected assembly seating)
- The entirety of NFPA 101 is not adopted
Where there is a conflict between the MSFC and any referenced codes and standards, the MSFC provisions apply.
Subjects Not Regulated – MSFC 102.8

• Where the code does not specify the requirements, compliance with the following are deemed to comply with the MSFC:
  − Applicable NFPA Standards
  − Other applicable nationally recognized fire safety standards
Matters Not Provided For – MSFC 102.9

- Companion to previous section – MSFC 102.8
- The fire code official can determine the requirements when conditions not covered in the MSFC are encountered
- This is intended when the codes are silent on an issue
- Not intended to replace the use of alternate methods (will discuss that later)
Conflicting Provisions – MSFC 102.10

- Conflicts between general and specific requirement:
  - Specific applies

- Conflicts between different code sections specifying divergent protection:
  - More restrictive applies

- Similar to MN Stat. § 645.26 (Irreconcilable provisions):
  - Where in conflict, special provision applies over general
Existing Group I Occupancies – MSFC 102.13

- NFPA 101 (Life Safety Code) adopted for existing:
  - Group I-2 (hospitals and nursing homes)
  - Group I-3 (used as detention & correctional)
- Cannot exceed construction provisions required by the building code
- Inmate housing size limit for smoke partition not applicable (MSFC 102.13.1)
Mixed Occupancies – MSFC 102.14

- Applies to buildings with two or more distinct occupancies
- Options for:
  - **Separated use:**
    - Uses are fire-separated
    - Comply with applicable codes for each use
  - **Non-separated use:**
    - No fire separations
    - Must meet provisions for more restrictive use
• Establishes a fire prevention department to implement, administer and enforce the fire code (MSFC 103.1)
• Fire code official to be appointed (MSFC 103.2)
• Deputies and inspectors can be appointed or assigned (MSFC 103.3)
• No liability for actions of fire code official, inspectors, boards of appeal, etc. (MSFC 103.4):
  – This section is not a strong defense against liability
  – Courts decide liability issues
MSFC Section 104
General Authority and Responsibilities
General Authority – MSFC 104.1

• Fire code official authorized to:
  – Enforce the code
  – Render interpretations of the code
  – Adopt policies and procedures to apply code provisions
• Interpretations, policies, procedures, regulations, etc.:
  – Are to comply with intent and purpose of the code
  – Cannot waive requirements specifically outlined in the code
Permits – MSFC 104.2

• Fire code official is authorized to:
  – Receive permit applications
  – Review construction documents
  – Issue permits
  – Inspect buildings or operations based on permits
  – Enforce compliance based on permit issuance
• 4th Amendment of the Bill of Rights protects against unreasonable search and seizure
• How can fire inspections be conducted?:
  – Consent of owner (or owner’s representative)
  – Administrative search warrant
  – Criminal search warrant (usually for criminal cases)
• Owner can limit consent
Right of Entry – MSFC 104.3

- Can inspect during reasonable times
- If the building is open to the public, it is reasonable that a fire inspector can enter and inspect public areas
- Permission is not required for inspections that can be accomplished from within the public right-of-way
- Do not use inspections as a law enforcement tool (looking for evidence of drugs, stolen property, etc.)
Other Sections – MSFC 104

• Proper identification required – MSFC 104.4
• Can issue notices and orders – MSFC 104.5:
  – Covered in MN Stat. 299F.011, Subd. 6
• Official records to be maintained – MSFC 104.6:
  – Typical data retention schedule is 7 years
  – May want to consider longer for certain things (like site plans or sprinkler plans)
  – Electronic data records can be maintained longer at no real additional cost to the agency or municipality
Approved Materials / Equipment – MSFC 104.7

- Approved means “acceptable to the fire code official”
  - MSFC Chapter 2 has a definition for “approved”
- Approved materials, equipment, and devices to be installed and used in accordance with the approval
- Materials are not to be reused:
  - Exception for reconditioned materials
  - Tested and in working order
Questions

Website: https://sfm.dps.mn.gov
Thank you

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