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PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

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NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

**ANDHRA PRADESH STATE DISASTER RESPONSE &
FIRE SERVICES DEPARTMENT**

Lr.C.No.20 / DGFS / Camp / 2022.

Date: 21-04-2022.

NOTIFICATION ON SETBACKS & OPEN SPACES

A) The purpose of this notification:

(i) About Setbacks & Open Spaces :

In case of "Setbacks & Open Spaces" the Director General, has chosen to go by the Local laws enforced by the Local buildings licensing authorities in the State of Andhra Pradesh as per Section 13(2) of Andhra Pradesh Fire Services Act, 1999 in Public Interest.

(ii) Mode of measurement of Height of buildings:

In Andhra Pradesh, Local Building Licensing Authorities treat (Stilt + 05 Floors) as buildings below 18 Meters in Height for residential purpose and (Ground + 04 Floors) as buildings below 15 meters in Height for commercial and business purposes. This will ease the burden of administration for measurement of the Height of the buildings from different adjacent roads which may be on different elevations causing confusion. We decided to adopt the definition of Local Building Licensing Authority as 'few feet above or below 18/15 Meters as the case may be', will not make much difference in fire fighting operations for issuing Fire " No Objection Certificate".

B) Whether the 'Fire Safety' can be ensured given the above?

This is an important consequential question. There are two aspects.

First, the question of fire fighting. This is be easier if we have large setbacks as mandated under National Building Code guidelines. However, under the Setbacks mandated by the local Laws, we can effectively fight fire as the "Hose Reels" which carry water under pressure to fight fire are very flexible and can be carried more than one kilometer away from fire tender to fight fires. In fact, we have been successfully attending to fire accidents in all buildings constructed before, 2006, the year AP Fire and Emergency Operations and Levy of Fee Rules, came into being, even though most of these buildings have no "Setbacks & Open Spaces". In addition, we have been successfully controlling fires in slum areas where even fire tender can't approach near to buildings from any side. Moreover, statistically, there are no more fires or fire related deaths in these buildings compared to those that comply with NBC guidelines prescribed setbacks. In addition, states like Delhi/Maharashtra have removed the requirement of setbacks prescribed by NBC. This is because of availability of appropriate technical means in attending to any fire accidents given that the local laws are observed.

Second, the issue of rescue. This can be handled by ensuring the following methods already available at our disposal such as

- a) Two stair cases at different places in every building.
- b) Horizontal connection between two neighborhood buildings.
- c) Having additional sliders in school Building or having ramps in hospital buildings in addition to staircase.
- d) Installing " Tube Lifts" fitted with exhaust fans outside of buildings.
- e) Having " German Chute" made with non inflammable materials.
- f) Having " Jump -in" nets, etc.

Therefore, the operational preparedness of fire fighting or rescue is not compromised by preferring the choice of the Local law prescribed "Setbacks & Open Spaces" given the number of cost effective methods and technologies available at our disposal.

C) How 'Public Interest' is served with this notification?

Section 13(2) of Andhra Pradesh Fire Services Act, 1999 gives choice to Director General in choosing between NBC or any Local Laws.

When a choice of application between NBC guidelines and the Local Laws, is to be chosen as per Law, Director General needs to go by requirements meeting “Public Interest”.

NBC Guidelines mandate that the open spaces shall be not less than 6 mtrs for Educational, Institutional and Assembly Buildings. However , NBC guidelines are not statutory in nature. Whereas, AP Building Rules, 2017 framed under local municipal laws are statutory in nature and prescribe different “Setbacks & Open Spaces” for different height of buildings. But there is no difference in buildings having more than 18 Metres between the local laws and NBC guidelines.

In addition, the Local Municipal Laws are amended from time to time, for example, in case of road widening, the local Laws provide for taking way of front portion of building or front Setbacks and in lieu of it permit raising height of the buildings vide G.O.Ms.No.119 MA&UD Dept, Dated.28-03-2017 and G.O.Ms.No.180 MA&UD Dept, Dated.01-10-2020. If we apply, NBC guidelines, then all such buildings subject to road widening will not be eligible for NOC. This provision is leading to a lot of confusion as buildings previously having Fire “NOC” suddenly have become not eligible for Fire “NOC” due to State Govt. Policy and public imperative of road widening. This anomaly needs to be removed by the Local fire chief i.e, “Director General” as per NBC guidelines under clause 3.4.2, part 4 of NBC, 2016.

Suppose, We are to apply NBC guidelines for Setbacks & open spaces, then none of the hospitals (buildings of both private and Govt. Hospitals) will qualify to get “ NOC “ in Vizag city and other cities in the State. So to close down all the Hospitals in the Urban centers across the State on this account, is clearly not in Public Interest.

Therefore, in the larger public interest, the Fire Department may follow the AP Building Rules, 2017, which are Statutory and facilitate operational requirements of Fire Safety.

D) Who has the Legal authority to enforce“ Setbacks & Open Spaces” as per AP Building Rules,2017?

There is no enabling provision to authorise demolition by the AP Fire Service Authorities. Maximum punishment for violation of provisions of AP Fire Services Act, 1999 is just a fine of Rs.5,000/- or up to three month simple imprisonment, that too after successful prosecution to be imposed by Judicial Magistrate.

Whereas, the building licensing authorities are conferred with powers to demolish buildings in case of "Setbacks & Open Spaces" violations.

Clearly, the Legislature in its considered wisdom, has conferred powers of enforcing proper "Setbacks & Open Spaces" on building licensing authorities and definitely not on Fire Services Department. Therefore, the question of ensuring and enforcing appropriate "Setbacks & Open Spaces" is better left to building licensing authorities.

E) Whether the above notification is in accordance with legal provisions?

Part-4 of NBC guidelines deals with Fire Safety related matters.

An extract of the Foreword to part 4 of the NBC:

"Absolute safety from fire is not attainable in practice. The objective of this part is to specify measures that will provide that degree of safety from fire which can be reasonably achieved. The code endeavours to avoid requirements that might involve unreasonable hardships or unnecessary inconvenience or interference with normal use and occupancy of buildings, but insists upon compliance with minimum standards of fire safety necessary for building occupants and users".

It is evident that NBC does not have the force of law and is not statutory in nature. It serves as a Model Code for adoption by all agencies involved in the building construction works.

The Government of Andhra Pradesh framed Andhra Pradesh Building Rules 2017, in supersession of the Andhra Pradesh Building Rules, 2012, Vide GO M.S.No.119 Municipal Administration and Urban Development (H) Department dated 28.03.2017. Rule 57 in Chapter VIII of the said Building Rules sets out tables specifying the minimum setback limits in relation to the height of a building. The Government further amended the said Building Rules vide GO Ms.No:180 Municipal Administration and Urban Development (H) Department dated 01.10.2020.

The said AP Building Rules, 2017 are statutory in nature and are framed by the Government in exercise of its powers under the GHMC Act, 1955, Andhra Pradesh Municipal Corporations Act, 1994, Andhra Pradesh Municipalities Act, 1965, Andhra Pradesh Town Planning Act, 1920, Andhra Pradesh Capital Region Development Authority Act, 2015, and Andhra Pradesh Metropolitan Region and Urban Development Authorities Act, 2016.

The Hon'ble Supreme Court in Life Insurance Corporation of India and Ors. vs. D.J. Bahadur and Ors., reported in AIR 1980 SC 2181, and Ajay Kumar Banerjee and Ors. v. Union of India and Ors., reported in (1984) 111 SCR 368 SC held that a prior special law would yield to a later general law, if either of the following two conditions is satisfied viz. i) the two are inconsistent with each other, or ii) there is some express reference in the later to the earlier enactment. If either of these conditions is fulfilled, the later law, even though general will prevail.

The Andhra Pradesh Fire Services Act was enacted in the year 1999, the National Building Code was published in the year 2016 and the AP Building Rules, 2017 came into force in the year 2017.

Therefore, applying the aforesaid rules of interpretation, the requirements set out in the aforesaid AP Building Rules, 2017 shall prevail, as it is the later general Law.

F) Does it improve transparency:

In absence of such clarity given under this notification, the Fire Service officers have been giving temporary 'No Objection Certificates' with conditionalities, which have been leading to unethical conduct in the Department at times. This kind of removal of ambiguities definitely improves transparency in issuing 'No Objection Certificates'.

G) Therefore, in case of "Setbacks & Open Spaces" the Director General has chosen to go by Local laws enforced by the Local Building licensing authorities in the State of Andhra Pradesh as per Section 13 (2) of A. P. Fire Services Act, 1999 in the larger public interest.

Further, We adopt the definition of Local Building Licensing Authority (Stilt + 05 Floors = 18 Meters for residential buildings and Ground + 04 floors = 15 Meters for Commercial/Business buildings) to ease the burden of administration in measuring the Height of buildings while issuing Fire 'No Objection Certificate'.

This enables fire department officials to focus on ensuring installation of appropriate "Fire Safety" Equipment in all categories of buildings.

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