

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Uniform Construction Code**

**Fees**

**Adopted Amendments: N.J.A.C. 5:23-4.18 and 4.20**

Proposed: November 16, 2015, at 47 N.J.R. 2696(a).

Adopted: March 29, 2016, by Charles A. Richman, Commissioner, Department of Community Affairs.

Filed: April 12, 2016, as R.2016 d.044, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:27D-124.

Effective Date: May 16, 2016.

Expiration Date: March 25, 2022.

**Summary of Public Comments and Agency Responses:**

Comments were received from: Michael G. McGuinness, Chief Executive Officer, NAIOP New Jersey Chapter; Robert M. Longo, AIA, Cornerstone Architectural Group, LLC; Joseph A. McNamara, Director, New Jersey State Laborers'-Employers' Cooperation and Education Trust; Brian Banaszynski, President, Heller Industrial Parks, Inc.; Eugene A. Preston, Partner, Dermody Properties; Thomas J. Heitzman, President, Whitesell; Frank Greek, President and Chief Executive Officer, F. Greek Development; and Mitchell Malec.

1. COMMENT: Seven commenters wrote in support of the proposed rulemaking. The reasons presented for supporting the proposed amendments included the fact that there are wide disparities in the fees charged by towns for warehouses and distribution centers, also known as

“big boxes.” The volume has little to do with the effort required for plan review and inspections. The fees charged are unjustified, excessive, and a disincentive to the industry. Capping the height at 20 feet for purposes of calculating the volume upon which the fee is based will significantly reduce fees to be more reflective of the actual associated work for the local code enforcement agency.

RESPONSE: The Department thanks the commenters for these expressions of support for the rulemaking and for its intent.

The below comments were sent by a retired employee of the Department of Community Affairs, Mitchell Malec.

2. COMMENT: The Department’s intentions appear to be amicable, but not equitable.

Defining “large space” as a Class 1 building or space does not have a positive impact, as stated, upon the agricultural industry since many barns and silos, etc., are not Class 1 buildings. It may be beneficial to break out commercial farm buildings from large, open-volume buildings and establish specific “caps.” A review of N.J.A.C. 5:23-3.2(d), especially paragraph (d)1, is recommended. In addition, this definition of large space or building, as proposed, would exclude many buildings that were once considered large, including warehouses, distribution centers, etc.

RESPONSE: The Department had proposed using the thresholds contained in N.J.A.C. 5:23-4.3A as these are established and accepted numbers for categorizing buildings based on size.

Upon further review, the Department agrees that the unintended consequences of using the Class 1 threshold are not in keeping with the Department’s intent of providing for fees that are reasonable and commensurate with the cost of enforcement. Accordingly, the Department is revising the rule upon adoption to delete the proposed reference to Class 1 structures in both

N.J.A.C. 5:23-4.18 and 4.20 and maintain the status quo. With regard to the further comment on agricultural buildings, as the commenter correctly points out in Comment 16 below, the rules already provide for a reduced fee and a maximum fee for commercial farm buildings.

3. COMMENT: The Department has also modified the section from being a building to being a space within a building. That has other impacts that need to be addressed.

RESPONSE: It is the Department's position that any impacts have been addressed by stipulating that the rule applies to single-story spaces.

4. COMMENT: Based on the notice of proposal, if one calculates the basic construction fee for a "non-large" 25,000 square foot, 40 foot height, one story storage building (S-1, Class 2) at a fee of \$0.001 per cubic foot of volume ( $25,000 \times 40 \times \$0.001 = \$1,000$ ) and compare to a large 28,000 square foot, 40 foot height, one story storage building (S-1, Class 1) at the same fee of \$0.001 per cubic foot of volume {Note - by proposal use 20 foot not 40 foot height} ( $28,000 \times 20 \times \$0.001 = \$560.00$ ) results in over a 40 percent basic construction fee cost reduction for a larger building - why doesn't \$560.00 cover the basic construction fee of a 3,000 square foot less building of similar/same characteristic? Consider a non-large building of 25,000 square foot per story, of two stories, and 60 foot in total height versus a large building of 28,000 square foot per story, of two stories, and 60 foot in total height.

( $25,000 \times 30 \times 2 \times \$0.001 = \$1,500.00$  versus  $28,000 \times 20 \times 2 \times \$0.001 = \$1,120$ ) Note that all stories are 30 foot in height and for storage use only in each building. (Two, single-story spaces.)

The commenter notes that the unit fee rate used above was for example purposes only. He suggests that the Department utilize typical municipal unit fee rates, for example calculations to recognize further the magnitude of disparity in fees that the proposed amendments would cause. Understanding that, if the larger building's basic construction fee covers code enforcement, then that fee, if smaller, should be applicable to the smaller building.

RESPONSE: Please see the Response to Comment 2 above.

5. COMMENT: The commenter questions why recreational uses/spaces were deleted and notes that this was not explained in the Summary. In regard to recreational uses, the commenter stated that he does not understand why a rock climbing gym of 18,000 square feet and 50 foot in height is being eliminated from being considered a large, open-volume space and asks that this be explained.

RESPONSE: Recreational spaces have been excluded because, as Assembly occupancies, such spaces involve complexities for code enforcement not found in large warehouses or similar structures. The intent of the current rulemaking is to address warehouse spaces.

6. COMMENT: The Department fees in N.J.A.C. 5:23-4.20 do not reflect the same requirements contained in N.J.A.C. 5:23-4.18. The Department's fee of \$0.0011 is only applicable for structures on farms and not the total scope of large, open-volume spaces, buildings, or structures. Revisions are needed. The unit rate fee established by municipalities for large, open-volume, single-story spaces is required to be less than the other established fees.

RESPONSE: The rules governing the Department's fees, at N.J.A.C. 5:23-4.20(c)2i(1) and (2), reflect three tiers for volume fees: \$0.038 per cubic foot for buildings of all groups, \$0.021 per

cubic foot for buildings of groups A-1, A-2, A-3, A-4, A-5, F-1, F-2, S-1, and S-2 and \$0.0011 per cubic foot, not to exceed \$1,602, for commercial farm buildings. These fees are consistent with the standards for municipal fees contained in N.J.A.C. 5:23-4.18.

7. COMMENT: It is recommended that any exception to how volume is computed also be reflected in N.J.A.C. 5:23-2.28, making sure it is clear that it is only for fee calculation purposes.

RESPONSE: It is the Department's position that it is clear that this is only for fee calculation purposes. Accordingly, no further amendment to the rules is necessary.

8. COMMENT: It is the commenter's hope that no one will confuse large buildings/spaces with the Building Subcode/Barrier Free definitions of large/small buildings. (Building Subcode sections 1104.4.2 and 1104.4.1)

RESPONSE: The Department does not anticipate that this will cause confusion in any way. The definitions of "large building" and "small building" for purposes of determining the requirements for accessibility are clearly separate from the rules governing the calculation of fees.

9. COMMENT: It may be beneficial, if the proposed amendments to fees are adopted, to send a reminder to municipalities that they need to change their construction code fee ordinances to reflect the changes, if needed. An update of Bulletin No. 79-8, Permit Fees for Large, Open-Volume Buildings will be necessary. Permitting software packages, such as PermitsNJ, will need to address the fee calculation changes.

RESPONSE: The Department thanks the commenter for pointing out these additional steps to

clarify and to address any change in the regulations governing fees. It is anticipated that Bulletin 79-8 will be withdrawn.

10. COMMENT: It may be beneficial to work with the National Association of Industries and Office Properties [sic] in establishing what should be considered a large, open-volume building/space. The commenter recalls they had comments in 2012, when these provisions were added. It also appears that the Department went with the 20 foot cap from a comment to the 2012 proposal with which the commenter does not agree.

RESPONSE: The organization now known as NAIOP (formerly the National Association of Industrial and Office Parks) is one of the primary proponents of the amendments to the rules governing fee calculations for large, open-volume spaces and worked with the Department to move this rule change forward.

11. COMMENT: It is the commenter's opinion that many Class 2 buildings should be (and are currently) considered large, open-volume buildings. Why not establish a percentage cap over the calculated Class 2 fee for Class 1 large, open-volume buildings/spaces? For example:

Fee shall be as calculated or XX percent more than the maximum Class 2 fee (utilizing maximum allowed Class 2 square footage and height when the Class 1 building/space exceeds Class 2 values) whichever is smaller. Note: Utilize both square footage and height caps for fee calculation only. Square footage times height equals volume. (It is the commenters hope that the point made here is understandable.)

RESPONSE: Please see the Response to Comment 2 above.

12. COMMENT: An atrium is considered a large, open space located within a building. If a Class 1 building contains an atrium, is the atrium volume calculated at the lower unit fee rate regardless of building use? If it is limited to the types identified by “such as,” what other types of building/spaces are included?

RESPONSE: An atrium is not considered a single-story space. By definition, an atrium penetrates more than one floor level.

13. COMMENT: Mezzanine levels are recognized as part of the floor below. How would the fee for a mezzanine level (of incidental use or same use) at a height of 30 feet within a large, open-volume warehouse building be calculated? Consider a mega-sized (1,000,000 square foot) warehouse with a 100,000 square foot mezzanine.

RESPONSE: The 20 foot limit on height should be applied above the portion of the building or space covered by the mezzanine to calculate the volume of that part of the building separately from the volume calculation for the balance of the building or space (the portion not beneath the mezzanine.) The two computed volumes should then be added together to determine the total volume for purposes of calculating the fee.

14. COMMENT: Are additions to large, open-volume buildings calculated at a lower unit rate? Consider a 1.3 million square foot warehouse/distribution center undergoing a 500,000 square foot expansion. (Toys “R” Us)

RESPONSE: Yes, if the addition itself is a large, open volume structure, then this rule would apply to additions.

15. COMMENT: It is suggested that the Department consider separating warehouses/distributions centers/storage buildings from agricultural/farm use buildings and structures and make a separate category addressing the mega-sized spaces/buildings along with the extra-large, large, medium, small, extra-small spaces/buildings and establish different unit fee rates if that was the intent. Then, utilizing a height cap may be more justifiable based on typical clear height for manual fork lifts (31 feet?), or automatic high velocity retrieval systems (52 feet?), or need for fire suppression system, or other criteria.

RESPONSE: The instant rulemaking achieves the intended purpose. If it is decided that further refinements to the fee calculation would result in fees more closely tied to the associated enforcement effort, then the Department would consider future rule revisions. Basing the fees on volume, in and of itself, is a system intended to tie the fees charged to the enforcement effort required.

16. COMMENT: Currently, the Department has a maximum basic construction fee for such structures on farms not to exceed \$1,602. To get to this value at a unit fee rate of \$0.0011, the cubic foot volume would need to be approximately 1,456,363, and if at 20 foot height, a square footage of approximately 72,818. A football field (including end zones) is 360 feet by 160 feet or 57,600 square feet. So consider a poultry house (chicken coop S-2) of VB construction, 60 foot wide, 600 feet in length, and 40 feet in height, a building that covers over half a football field. Such a building would have a volume of 1,440,000 cubic feet, and a current Department basic construction fee of \$1,584. But this building is not a Class 1 building, and therefore, not within the scope of large, open-volume building, as proposed. Such a building is subject to the

higher unit rate fee. And if it is not built on a farm, it would be subject to a Department fee of \$30,240 or additional cost of \$28,656.

RESPONSE: Please see the Response to Comment 2 above.

17. COMMENT: Changes to N.J.A.C. 5:23-4.19 were not in the notice of proposal. Is the surcharge fee (training fee) also based on the 20 foot cap volume calculation? Or does that remain at the actual calculated volume? Note that a new farm building of 1,456,363 cubic foot volume has a Department basic construction fee of \$1,602 and a surcharge of \$5,403. The commenter writes “over 3 times,” presumably his observation that, in the example, the surcharge would be more than three times the basic construction fee. The commenter then suggests calculating the fees for a 1,000,000 square foot, 80 foot in height warehouse distribution center. As proposed, and based on a 20 foot height, the Department basic construction fee is \$420,000, and the surcharge, based on 80 feet is \$296,800. The commenter suggests that the Department may want to look at adjusting the surcharge fee appropriately.

RESPONSE: The State permit surcharge, at N.J.A.C. 5:23-4.19, does not involve a separate or different method of volume computation. The volume used always is that used for purposes of calculation of the other fees.

### **Federal Standards Statement**

No Federal standards analysis is required because the amendments are not being adopted under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or any State statute that incorporates or refers to a Federal law, standards, or requirements.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks

**\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

5:23-4.18 Standards for municipal fees

(a) – (b) (No change.)

(c) Basic construction fee: The basic construction fee shall be computed on the basis of the volume of the building or, in the case of alterations, the estimated construction cost, and the number and types of plumbing, electrical and fire protection fixtures and devices as herein provided.

1. Fees for new construction or alterations shall be as follows:

i. – v. (No change from proposal.)

vi. The unit rate for large, open-volume, single story spaces in buildings, such as barns, silos, greenhouses, warehouses, distribution centers, and other agricultural, and storage-use occupancies, shall be less than the unit rate for other types of buildings and occupancy classifications. This shall be clearly indicated in the ordinance and schedule\***[;]\*\*.\***

**\*[(1) For the purpose of applying this subparagraph, “large” shall be defined as a Class 1 building as per N.J.A.C. 5:23-4.3A(d)3.]\***

**\*[(2)]\* **(1)** For the purpose of calculating the volume to determine the fee for these spaces, the height shall be limited to 20 feet notwithstanding the fact that the actual height of the space may be greater than 20 feet\***[.]\*\*;\*]****

vii. – x. (No change from proposal.)

2. – 6. (No change.)

(d) – (l) (No change.)

#### 5:23-4.20 Department fees

(a) – (b) (No change.)

(c) Departmental (enforcing agency) fees shall be as follows:

1. (No change.)

2. The basic construction permit fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and rating of electrical devices, the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates, and/or the applicable flat fees as provided in this subchapter plus any special fees.

i. Building volume or cost: The fees for new construction or alteration are as follows:

(1) (No change from proposal.)

(2) The fee shall be \$ 0.021 per cubic foot of volume for groups A-1, A-2, A-3, A-4, A-5, F-1, F-2, S-1, and S-2, and the fee shall be \$ 0.0011 per cubic foot for structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), with the maximum fee for such structures on farms not to exceed \$ 1,602.

(A) (No change from proposal.)

\*[(B) For the purpose of applying (c)2i(2)(A) above, “large” shall be defined as a Class 1 building as per N.J.A.C. 5:23-4.3A(d)3.]\*

(3) – (9) (No change from proposal.)

ii. - iv. (No change.)

3. – 10. (No change.)

(d) – (e) (No change.)