

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Uniform Construction Code**

**Adopted Amendments: N.J.A.C. 5:23-2.20, 3.11, 3.14, and 3.16**

Proposed: June 5, 2023, at 55 N.J.R. 1056(a).

Adopted: October 31, 2023, by Jacquelyn A. Suárez, Acting Commissioner, Department of Community Affairs.

Filed: October 31, 2023, as R.2023 d.138, **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-119 et seq.

Effective Date: December 4, 2023.

Expiration Date: February 29, 2029.

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

Comments were received from Mitchell Malec, retired former employee of the Department of Community Affairs (Department).

1. COMMENT: The commenter notes that the notice of proposal summary for the amendment at N.J.A.C. 5:23-3.11(g) includes an incorrect reference to the ending of the Barrier Free Recreation Standards at N.J.A.C. 5:23-7.31. The commenter states that the correct reference should be N.J.A.C. 5:23-7.32, as this is the last subcode of the Barrier Free Recreation Standards. Additionally, the commenter notes that the Summary statement referencing the “reserved subcode” requires clarification.

RESPONSE: The Department thanks the commenter for their input and agrees. The Department will change the reference to the Barrier Free Recreation Standards to reflect the proper section

number upon adoption. Additionally, regarding the reserved subcode, ‘reserved’ should not have been included in the Summary statement.

2. COMMENT: The commenter recommends that N.J.A.C. 5:23-3.16(a)2i be deleted as it is redundant to the language within Article 90, Section 90.5(C) of the National Electric Code (NEC). Additionally, the commenter recommends revising N.J.A.C. 5:23-3.16(b)1ii, as it does not appear needed as a result of the proposed amendment.

RESPONSE: The Department thanks the commenter for their input; however, at this time the Department respectfully disagrees that N.J.A.C. 5:23-3.16(a)2i is redundant and should be deleted. In addition, N.J.A.C. 5:23-3.16(b)1ii is outside the scope of this rulemaking and will not be revised.

3. COMMENT: The commenter notes that, at N.J.A.C. 5:23-3.11(g), the Department states that they shall be the sole agency for the enforcement of the Barrier Free Recreation Standards within N.J.A.C. 5:23-7.16 through 7.31. The commenter states that this proposed amendment does not contain all appropriate sections and also includes reserved sections, and questions if the Department has enforcement responsibility over reserved sections.

RESPONSE: The Department addresses the issue concerning listing all appropriate sections in the Response to Comment 1, including the Department’s intent to change the reference of the Barrier Free Recreation Standards to reflect the proper section number. Additionally, the Department presumes code users understand that enforcement of reserved sections is not actionable and that the reserved sections are included due to the range of applicable Barrier Free Recreation Standards.

4. COMMENT: The commenter requests that the Department revise N.J.A.C. 5:23-2.38(b), as this subsection would be impacted by the proposed amendment at N.J.A.C. 5:23-3.11(g).

RESPONSE: The Department thanks the commenter for their input and will review N.J.A.C. 5:23-2.38(b) to ensure consistency within the Uniform Construction Code (UCC); however, N.J.A.C. 5:23-2.38 is not addressed in the notice of proposal and, therefore, is beyond the scope of this rulemaking.

5. COMMENT: The commenter states that the Department should consider Comment 34 at 51 N.J.R. 1399(a), as part of their comments, as it is relevant to this rulemaking and has yet to be addressed.

RESPONSE: The Department notes that comments from previous adoptions are outside of the scope of this rulemaking and will not be considered at this time. Additionally, the Department already addressed Comment 34 in the response at 51 N.J.R. 1399(a).

6. COMMENT: In regards to N.J.A.C. 5:23-3.11(g), the commenter questions how the Department is the sole agency for enforcement of the Barrier Free Recreational Standards because of contradicting statements in their Response to Comment at 34 51 N.J.R. 1399(a). The commenter notes that in response to their comment, the Department stated that accessible recreation requirements of the Uniform Construction Code are enforced by the facility manager and not by local code enforcement officials.

Additionally, the commenter questions who the enforcement agency is for the International Building Code Section 1111, Recreational facilities, when the requirements are in conflict with N.J.A.C. 5:23-7, in cases such as shooting facilities and boating facilities.

RESPONSE: The proposed amendments do not impact enforcement responsibilities with the Barrier Free Recreation Standards. Specifically, the proposed amendment at N.J.A.C. 5:23-3.11(g) is an administrative correction that revises to a cross-reference to the Barrier Free Recreation Standards within the UCC and, as such, this comment, that is related to enforcement requirements is outside the scope of this rulemaking, as it would have an impact on the requirements of the Uniform Construction Code.

7. COMMENT: The commenter questions if the impetus for the changes to the regulations concerning recreation facilities at N.J.A.C. 5:23-7 was the result of complaints or comments from designers of playgrounds and recreational facilities. The commenter notes that if the changes were not a result of discussions with designers, what was the Department's reasoning for the changes.

RESPONSE: The proposed amendment at N.J.A.C. 5:23-3.11(g), which references N.J.A.C. 5:23-7, was due to the discovery of an administrative error in the UCC. This error incorrectly references sections that are reserved and do not contain rules concerning recreational facilities. Due to this distinction, discussions with designers of playgrounds and recreational facilities were not necessary.

8. COMMENT: The commenter recommends that N.J.A.C. 5:23-3.16(a)2i be deleted, as the National Electrical Code Article 90, Section 90.5(c), makes this proposed amendment redundant.

Additionally, the commenter states the proposed language appears to be in the wrong section, if retained.

RESPONSE: The Department thanks the commenter for their input; however, the Department respectfully disagrees with the recommendation for deletion of the proposed amendment and that it is in the incorrect section. The language at N.J.A.C. 5:23-3.16(a)2i is still appropriate as written.

9. COMMENT: The commenter notes that N.J.A.C. 5:23-3.16(b)1ii does not appear needed as there are not any exceptions listed in the proposed amendment.

RESPONSE: The Department thanks the commenter for their input, however, N.J.A.C. 5:23-3.16(b)1ii is outside of the scope of this rulemaking, and the Department has no intention of deleting the section at this time, as it is still appropriately serving code users.

10. COMMENT: The commenter requests revision to the proposed amendment at N.J.A.C. 5:23-3.16(b)7vi because the proposed language states, “Article 680.4, Inspections after installation, shall be deleted.” The commenter notes that they believe the Department’s intent was to propose language that states, “Section 680.4, entitled Inspections after installation, is deleted in its entirety.”

RESPONSE: The Department thanks the commenter for their input; however, the Department respectfully disagrees with the request for revision because the deleted section is comprised of a single sentence without any subsections.

11. COMMENT: The commenter questions, in regard to N.J.A.C. 5:23-2.20 and 3.14, why the New Jersey edition of the 2021 International Building Code (IBC) currently reflects the amendments prior to adoption. The commenter states that this makes it difficult for individuals to distinguish when these amendments are effective and enforceable.

In addition, the commenter notes that there are numerous sections of the IBC that reflect unadopted amendments. The commenter questions if code officials are enforcing unadopted regulations and if the Department is recognizing these unadopted amendments as effective since the September 6, 2022, adoption date. The commenter requests explanation on these matters.

RESPONSE: The Department notes that the amendments referenced by the commenter within the New Jersey edition of the 2021 IBC are changes that were made by the IBC in errata. The proposed amendments made by the Department are to ensure consistency throughout the building subcode regarding mass timber elements.

12. COMMENT: The commenter questions if IBC Section 1704.4 is “Contractor responsibility” or “Contractors’ responsibility” or if it is dependent on the printing of the IBC the Department is using.

RESPONSE: The Department thanks the commenter for their input. The Department intends to change the proposed language upon adoption to keep the UCC consistent with the 2021 IBC and state “contractor responsibility.”

13. COMMENT: The commenter recommends that the proposed amendment at N.J.A.C. 5:23-2.20(b), should be revised to read, “mass timber elements in Type IV-A, IV-B, and IV-C construction.” The commenter states that this will result in reflecting the accurate IBC

terminology from the 2021 IBC Section 1705.5.3. Additionally, the commenter recommends making this revision to the proposed amendments at N.J.A.C. 5:23-3.14(b)16ii and xii for consistency.

RESPONSE: The Department thanks the commenter for their input and agrees. The Department intends to change N.J.A.C. 5:23-2.20(b) and 3.14(b)16ii and xii upon adoption for consistency between the UCC and the 2021 IBC.

14. COMMENT: The commenter notes that in the proposed amendment at N.J.A.C. 5:23-3.14(b)16xix, editorial corrections appear needed because there is a space between “Submittal” and “s” and a missing “the.” The commenter notes that they believe the Department’s intention was to correct the title to “Submittals to the building official.”

RESPONSE: The Department thanks the commenter for their input and agrees in part. The Department intends to correct the proposed amendment upon adoption at N.J.A.C. 5:23-3.14(b)16xix by including a “the” in the title of the section prior to “building official”; however, the referenced additional space is not present in the notice of proposal and will not be corrected.

15. COMMENT: The commenter suggests that the Department review N.J.A.C. 5:23-5.19G and determine if the requirements for mass timber construction special inspectors should be included in the proposed amendments.

RESPONSE: The Department did incorporate the requirements for mass timber special inspectors at N.J.A.C. 5:23-5.19G. The amendment to include the requirements for mass timber special inspectors in the aforementioned rule was adopted by the Department on March 6, 2023.

16. COMMENT: The commenter recommends the Department propose amendments at N.J.A.C. 5:23-3.14(b)9vii, which references IBC Section 1006.2.1, be submitted as an IBC code change proposal.

RESPONSE: The Department respectfully disagrees because N.J.A.C. 5:23-3.14(b)9vii is only applicable in New Jersey and, therefore, there is no basis for submitting this change to the International Code Council for inclusion in their national standard.

17. COMMENT: The commenter provided commendation to the Department for being receptive and quick to correct errors when presented with input from citizens.

RESPONSE: The Department thanks the commenter for their feedback.

### **Federal Standards Statement**

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

**Full text** of the adoption follows (additions to the proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

N.J.A.C. 5:23-2.20 Tests and special inspections

(a) (No change from proposal.)



(b) All special inspections, as provided in the building subcode, shall apply to Class 1 buildings, mass timber elements ~~of~~ **in** Type IV-A, IV-B, and IV-C construction, and a smoke control system installed in any building. A special inspector shall be independent of the contractor and shall be responsible to the building owner or building owner's agent. Special inspectors shall be certified in the appropriate specialty.

1. (No change from proposal.)

(c)–(f) (No change from proposal.)

### CHAPTER 3. SUBCODES

#### 5:23-3.11 Enforcement activities reserved to the Department

(a)–(f) (No change from proposal.)

(g) The Department of Community Affairs shall be the sole agency for the enforcement of the Barrier Free Recreation Standards (N.J.A.C. 5:23-7.16 through ~~7.31~~ **7.32**). Any complaint of noncompliance with these rules shall be forwarded to the Department.

(h)–(k) (No change from proposal.)

#### 5:23-3.14 Building subcode

(a) (No change from proposal.)

(b) The following chapters of the building subcode are modified as follows:

1.–15. (No change from proposal.)

16. Chapter 17, Structural Tests and Special Inspections, shall be amended as follows:

i. (No change from proposal.)

ii. In Section 1701.1, Scope, "shall apply to Class 1 buildings, mass timber elements *\*[of]\* \*in\** Type IV-A, IV-B, and IV-C construction, and smoke control systems in all buildings and" shall be inserted after "chapter."

iii.-xi. (No change from proposal.)

xii. In Section 1704.2, Special inspections and tests, in the first sentence, "of Class 1 buildings, mass timber elements *\*[of]\* \*in\** Type IV-A, IV-B, and IV-C construction, or any building containing a smoke control system" shall be inserted after "construction." Additionally, in two places in the first sentence and in exceptions #1 and #2, "building official" shall be deleted and "construction official" shall be inserted. Lastly, "Section 105" and "Section 110" shall be deleted and "the administrative provisions of the Uniform Construction Code (N.J.A.C. 5:23)" shall be inserted in both locations.

xiii.-xvii. (No change from proposal.)

xviii. In Section 1704.4, *\*[Contractors']\* \*Contractor\** responsibility, in the first sentence, "main - wind- or" shall be deleted. In addition, in the same sentence, "or a wind-" shall be deleted. Additionally, in the first sentence, "building official" shall be deleted and "construction official" shall be inserted.

xix. In Section 1704.5, Submittals to *\*the\** building official, in the title and in the first sentence, "building official" shall be deleted and "construction official" shall be inserted. In addition, in item # 7, "B and C," shall be deleted in reference to seismic design categories.

xx–xlv. (No change from proposal.)

17.–27. (No change from proposal.)