

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Adopted Amendments: N.J.A.C. 5:23-2.16, 2.18, and 2.29

Proposed: January 21, 2020, at 52 N.J.R. 95(a).

Adopted: September 24, 2020, by Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Filed: November 12, 2020, as R.2020 d.132, **without change**.

Authority: N.J.S.A. 52:27D-124 and P.L. 2013, c. 123.

Effective Date: December 7, 2020.

Expiration Date: March 25, 2022.

Summary of Public Comments and Agency Responses:

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

1. COMMENT: The commenter posits that the proposed text at N.J.A.C. 5:23-2.16(j)6 does not accurately reflect the requirements of the Uniform Construction Code Act (Act) found at N.J.S.A. 52:27D-130 and states that the Act contains specific requirements that need to be reflected in the regulations. The commenter offers suggested language with a generic statement as to when a permit update must be completed, a specific subordinate section addressing a transfer of ownership, and a subsection subordinate to that addressing replacement performance guarantees.

RESPONSE: The Department disagrees that the added language does not accurately or adequately capture the statutory requirement. Furthermore, as is always the case, the rules exist

alongside the statute. It is not necessary for all statutory provisions to be repeated in the rules. The intent of this rulemaking, as reflected in the notice of proposal Summary, is to incorporate the statutory requirement for a replacement performance guarantee, where required, as a condition of a construction permit. The suggested language submitted by the commenter goes beyond the intent of the instant rulemaking and is longer and more detailed than that proposed by the Department. These suggested changes will not be made upon adoption.

2. COMMENT: The commenter applauds the Department's attempt to clarify, within the Uniform Construction Code, everyone's Fourth Amendment rights. He expresses concern that local code officials do not recognize the need for an administrative warrant and suggests that administrative code enforcement training provided to code officials, housing inspectors, and others should include administrative warrant procedures, including when an administrative warrant is needed.

RESPONSE: The Department thanks the commenter for this expression of support and agrees that the need for an administrative warrant is a topic that should be covered in training for code officials.

3. COMMENT: The commenter suggests the inclusion of a requirement that the matter be forwarded to the legal counsel of the jurisdiction and a requirement to notify the Department when entry is refused.

RESPONSE: The inspector or code official, as an employee of a municipality, must follow his or her employer's procedures for contacting legal counsel or forwarding a matter to legal

counsel. This is not something to be established by a Uniform Construction Code requirement. And while instances where access to perform a Uniform Construction Code inspection should be rare, it is difficult to see what may be gained through a requirement that denial of access be reported to the Department.

4. COMMENT: The commenter questions what “improperly” denied might be, suggests changing “search warrant” to “inspection warrant,” and asks that the Department consider the addition of an exception for emergency circumstances. He offers specific, suggested language to address these concerns as well as the suggestions contained in Comment 3.

RESPONSE: The Department’s language accomplishes its stated purpose, which is to make code officials aware of the administrative warrant as a remedy in cases where access is denied. Furthermore, the term “administrative search warrant” is the correct legal term.

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 Federal law, standards, or requirements.

Full text of the adoption follows:

TEXT

