

**COMMUNITY AFFAIRS**

**Division of Codes and Standards**

**Residential Site Improvement Standards**

**Uniform Construction Code**

**Adopted Amendments: N.J.A.C. 5:21-3.1 and 4.14; and 5:23-1.4 and 3.14**

**Adopted New Rule: N.J.A.C. 5:23-2.36**

Proposed: September 19, 2022, at 54 N.J.R. 1763(a)

Adopted: \_\_\_\_\_, 2023 by Kimberly K. Holmes, Acting Commissioner Department of Community  
Affairs

Filed: \_\_\_\_\_, 2022 as R.2022 d. \_\_\_\_\_, **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. and N.J.S.A. 40:55D-40.4.

Effective Date:

Expiration Date:

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**Kimberley K. Holmes**

**Acting Commissioner**

## Summary of Public Comments and Agency Responses

Comments were received from Grant Lucking, New Jersey Builders Association and Mitchell Malec, retired former employee of the Department of Community Affairs.

Comments received from Grant Lucking, New Jersey Builders Association (NJBA).

1. COMMENT: The commenter supports the proposed amendment to N.J.A.C. 5:21-3.1 and - 4.4(c)1-3 which removes the reference to minimum parking spaces as a *de minimum* exception and clarifies that Table 4.4 establishes maximum parking standards. The commenter agrees with the Department's explanation that: "This encourages better, more efficient designs by allowing municipalities to make decisions based on the type and nature of housing. Many municipalities with large multi-family dwellings that have widespread access to public transportation do not need to meet the number of spaces set forth in those requirements. The ability to go below this standard allows for better design and less wasted space in these areas."

RESPONSE: The Department thanks the NJBA for their support and comment.

2. COMMENT: The commenter notes that P.L.2021, c.171 requires that the Residential Site Improvement Standards (RSIS) rules, N.J.A.C. 5:21, be updated to include the requirements of section 1 through 3 of P.L.2021, c.171 and that these requirements include subsection e. of section 3 and subsection a.(1)(a) of section 3. The commenter believes the entirety of these subsections should be included in the rule proposal to avoid confusion and to create consistency between the RSIS, model ordinance, and P.L.2021, c.171. The commenter states that

alternatively, the rule could require compliance with the model ordinance but leave out additional details .

The commenter expressed the opinion that, because N.J.A.C. 5:21-4.4(g) includes information regarding what percent of parking spaces should be make-ready spaces, among other details from section 1 through 3 of P.L.2021, c.171, this rule should include all pertinent information from section 1 through 3 of P.L.2021, c.171 regarding the calculation of required parking spaces, the minimum percentage of make-ready spaces, and minimum percentage of charging stations.

RESPONSE: The Department thanks the commenter for the suggestion and agrees that all of the information provided in section 1 through 3 of P.L.2021, c.171 should be included in the RSIS to ensure clarity among code users. The Department intends to undertake a separate rulemaking document to incorporate these changes, as well as any other necessary changes to best incorporate the requirements set forth in P.L.2021, c.171.

3. COMMENT: The commenter notes subsection e. of section 3 of P.L.2021, c.171 states that: “A parking space prepared with electric vehicle supply equipment or make-ready equipment pursuant to this section shall count as at least two parking spaces for the purpose of complying with a minimum parking space requirement. This subsection shall result in a reduction of no more than ten percent of the total required parking.” The commenter believes this subsection should be included in the proposed changes to N.J.A.C. 5:21-4.4(g) to alert reviewing authorities of this credit when municipal ordinances with minimum parking standards are in effect.

The commenter notes that absent clarification on the “two for one” credit, the maximum parking standards in Table 4.4 will be misleading and invalid on many projects. The commenter

goes on to say that a “two for one” credit will automatically reduce maximum parking standards allowed, since a minimum fifteen percent of parking spaces will automatically be required to be make-ready, in turn, resulting in an automatic “two for one” discount on fifteen percent of required parking spaces.

RESPONSE: The Department thanks the commenter for the suggestion and agrees that the “two for one” credit established in P.L.2021, c.171 should be included in the RSIS. As stated in response to Comment 2, the Department intends to undertake a separate rulemaking document to incorporate these changes, as well as any other necessary changes to best incorporate the requirements set forth in P.L.2021, c.171.

4. COMMENT: The commenter notes that proposed N.J.A.C. 5:21-4.4(g)1 does not include the requirement that one third of the fifteen percent of make-ready spaces be installed with charging equipment and states that for consistency with subsection a.(1)(a) of section 3 of P.L.2021, c.171, this requirement should be included.

RESPONSE: The Department thanks the commenter for the suggestion and agrees that this provision should be incorporated into the RSIS. The Department intends to undertake a separate rulemaking to incorporate these changes.

5. COMMENT: The commenter notes that proposed N.J.A.C. 5:21-4.14(g)1 applies the fifteen percent make-ready calculation to the number of spaces “approved by municipalities” while proposed N.J.A.C. 5:23-2.36(a)1 applies the fifteen percent make-ready calculation to “off-street parking required by a municipal ordinance,” and the model ordinance and P.L.2021, c.171 applies to “required off-street parking spaces.” The commenter states that the number of parking

spaces “approved” by a municipality could be higher or lower than the number “required by ordinance”, and notes that the phrase “off-street” is also important to include in these proposed regulations as certain projects may require the improvement or expansion of roadways that include new on-street parking and the requirement to provide make-ready spaces for on-street parking is beyond the scope of P.L.2021, c.171.

The commenter believes that the phrase “off-street parking approved by a municipality” is the most preferable phrase to utilize across all regulations and the model ordinance since it is site specific. Additionally, the commenter notes that this phrase reflects that a developer taking advantage of the “two for one” discount to meet minimum parking requirements under a municipal ordinance, would be required to install make-ready spaces in fifteen percent of the final parking space total, as opposed to fifteen percent of the spaces required by municipal ordinance.

RESPONSE: The Department thanks the commenter and agrees that “approved by a municipality” should be the phrase utilized throughout the codes. Because this change is non-substantive and establishes internal consistency between the UCC, RSIS, and the Model Ordinance, a change is made upon adoption to N.J.A.C. 5:23-2.36, to change the term “required by a municipal ordinance” to “approved by a municipality.”

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

6. COMMENT: The commenter states that they are unaware of a definition of Level 1, 2, and direct-current fast chargers (DCFC) within P.L.2021, c.171. They note that the Department’s

model ordinance contains charging level definitions and the proposed amendments contain references to charging levels. The commenter would like to be provided the source of these definitions and suggests that the reference used for these definitions be included in the proposal for clarity.

RESPONSE: The Department respectfully disagrees that the definitions should be incorporated into the Residential Site Improvement Standards or the Uniform Construction Code, because the Model Ordinance adopted by the Office of Local Planning Services, which contains the relevant definitions, is mandatory and applicable for every municipality in the State. These definitions are common industry standard and are widely available online, including in the Model Ordinance and on the Department of Environmental Protection's Drive Green webpage.

7. COMMENT: The commenter questions why the proposed new rule is requiring Group R-4 buildings to comply only with the provisions of N.J.A.C. 5:23-2.36(b) and not both N.J.A.C. 5:23-2.36(a) and 2.36(b).

RESPONSE: Section 3 of P.L.2021, c.171, which modifies N.J.S.A. 40:55D-66.20, is applicable to, "a multiple dwelling with five or more units of dwelling space, which shall include a multiple dwelling that is a building held under a condominium or cooperative form of ownership, a mutual housing corporation, or a mixed use development." Group R-4, as defined at N.J.A.C. 5:23-3.14, does not meet the definition of buildings within that section of the law, thus excluding Group R-4 buildings from the need to comply with N.J.A.C. 5:23-2.36(a).

8. COMMENT: The commenter notes that as written, the proposed amendment N.J.A.C. 5:21-4.14(g) appears to be applicable to all N.J.A.C 5:21-4.14 Table 4.4 residential land uses, thus

exceeding the law. They comment on questions what approved or required parking spaces the Department is referring to in N.J.A.C. 5:21-4.14(g)1 that must be make-ready or have electric vehicle service equipment (EVSE). The commenter notes that if the Department's intent is to allow municipalities to expand make-ready and EVSE requirements by ordinance to all residential uses, then the impacts will need more consideration before adoption. The commenter additionally states that if N.J.A.C. 5:21-4.14(g) is attempting to explain what the law requires then it is incorrectly written and should not be adopted.

RESPONSE: The changes within 4.14(g) restructure the section to incorporate the requirements of P.L.2021, c.171 and also address parking outside the scope of the new law. The purpose of these amendments was not entirely intended to incorporate P.L.2021, c.171, and thus the Department respectfully disagrees that this section is incorrect. These amendments address recent trends in development and allow for greater flexibility in the parking standards. The proposed regulations were reviewed carefully by the Department, the Site Improvement Advisory Board, and a number of other agencies to ensure consistency and accuracy with the requirements of the law.

9. COMMENT: The commenter notes that there appears to be a lack of coordination with the law, model ordinance, and the proposed regulation changes. The commenter points to the change in the provisions from minimum to maximum in Table 4.4 of N.J.A.C. 5:21-4.14 and the law allowing make-ready and EVSE parking spaces to be counted as two spaces for the purpose of complying with a minimum parking space requirement to be troublesome, because it could lead to developments with fewer standard parking spaces. The commenter notes that the law appears

to have been based on Table 4.4 being a minimum requirement, not a maximum and if the department has considered the impacts of this distinction.

RESPONSE: The Department respectfully disagrees. The use of the term maximum in Table 4.4 is not in conflict with the requirements of P.L.2021, c.171. This change gives municipalities the ability to allow for fewer parking spaces than those listed within the table without notice to the Department. This is often appropriate in new, multi-use developments where there is greater access to public transportation. The impacts of this were carefully considered, and it was determined that this amendment allows for greater flexibility and better, more efficient designs for parking which meets the needs of varying housing stock, style, and location throughout the State.

10. COMMENT: The commenter states that the two-space counting reduction should be reflected in the RSIS and would like clarification on if this reduction is applicable to all residential uses and also applicable to non-multiple dwelling parking spaces, garage minimum required parking spaces, provided parking spaces, or approved parking spaces.

RESPONSE: As stated in response to Comment 3, above, the Department agrees with this suggestion and will be incorporated in a separate rulemaking. The use of this reduction is governed by the Model Ordinance.

11. COMMENT: The commenter states that the Department's new rule, N.J.A.C. 5:23-2.36, specifically 2.36(a), does not accurately reflect the law. The commenter asks when would two accessible EVSE be required as the Department's proposed amendments appear to require all accessible make-ready or accessible EVSE parking spaces to comply with the requirements for



van accessible parking. The commenter asks for the Department's justification for requiring all EVSE spaces to be the dimensions of an accessible van parking space especially since the International Building Code Section 1107.2 has an exception for Group R-2, R-3 and R-5 occupancies that the Department is also deleting. The commenter states that there appears to be a substantial difference in what is required by law and what the Department has proposed and that these regulations should not be adopted as proposed.

RESPONSE: The Department respectfully disagrees with the commenter. Pursuant to section 3.d.(2) of P.L.2021, c.171, occupancies of Groups R-2, R-3, and R-5 are required to comply with the model ordinance. The exception at Section 1107.2 was proposed for deletion to ensure consistency with the Model Ordinance per section 4 of P.L.2021, c.171.

12. COMMENT: The commenter notes that the Department adopted the 2021 International Building Code in September 2022 with Chapter 11 (Accessibility), Section 1107 adopted without amendment. The commenter states that the Department is modifying Section 1107.2 without technical justification and without submission of a code change proposal to the National Model Code Adoption Agency or a public hearing on the matter. The commenter explains the scope of Section 1107 excluded electrical vehicle charging stations provided to Group R-2, R-3, and R-4 occupancies and that the Department does not have justification to make all EV accessible spaces van accessible.

RESPONSE: The Department respectfully disagrees that this change requires a code change proposal to the National Model Code Adoption Agency . The change is necessary to implement P.L.2021, c.171, which supersedes the requirements set forth in the national model codes. There is no basis for submitting this change to the International Code Council for inclusion in their

national standard as it is only applicable in New Jersey. Further, pursuant to the Uniform Construction Code Act, the Department is justified in ensuring all EV accessible spaces van are accessible. N.J.S.A. 52:27D-123b(5) states, “The commissioner shall be authorized to adopt a barrier free subcode or to supplement or revise any model code adopted hereunder, for the purpose of insuring that adequate and sufficient features are available in buildings or structures so as to make them accessible to and usable by persons with physical disabilities.” Given all of this, there was no need for a public hearing.

13. COMMENT: The commenter states that the Department’s model ordinance contains construction provisions that are in conflict with the adopted UCC model codes and suggests that the Department review the UCC and N.J.A.C. 5:23-1.5. The commenter questions if the Department’s intent is to modify model code provisions. If so the commenter states that code change proposals should be appropriately submitted. The commenter recommends that the Department appropriately modify the model ordinance.

RESPONSE: The Department respectfully disagrees that the Model Ordinance and the UCC are inconsistent. The changes to the UCC are aligned with the Model Ordinance and were reviewed for consistency. Further, the amendments to the UCC are necessary in accordance with P.L.2021, c.171, which supersedes the requirements of the model codes. As this proposed amendment applies only in New Jersey, there is no basis for submitting the amendment to the International Code Council for inclusion in the national standard.

14. COMMENT: The commenter notes that N.J.A.C. 5:23-2.36(a)2 and (b)7 appear to regulate the size of non-accessible make-ready and EVSE parking spaces and questions what subcode

official is responsible for enforcement of these provisions when a new parking lot is made.

Additionally, the commenter notes that an 18-foot length may not provide sufficient length for a mobility device user that uses a ramp or lift equipment with a van and asks what analysis was done or what recognized source the Department used in deriving these dimensions.

RESPONSE: The dimension of non-accessible parking spaces is consistent with the Residential Site Improvement Standards at N.J.A.C. 5:21-4.15, Parking space size. There is no basis for standard parking spaces to have the same dimensions as accessible parking spaces. It is the responsibility of the municipal engineer to ensure that parking spaces are the proper size.

15. COMMENT: The commenter states that N.J.S.A. 52:27D-123b(4) allows the Department to adopt either the newest edition of the model code or defer to a previous requirement of the model code and notes that the Department adopted Chapter 11, Section 1107 of the 2021 IBC on September 6, 2022 without change. The commenter questions the legal provision the Department is using to be able to modify Section 1107 as proposed. The commenter notes that the Department appears to be establishing technical provisions while including the applicability of the law and provides an example stating that the vehicle space length size is not contained in Section 1107.2.2 but is contained in the proposed amendments. The commenter states that it appears Section 1107 serves little purpose due to the applicability of the law and the Department's proposed technical provisions and recommends the Department delete Section 1107 and have all EV charging station provisions contained in N.J.A.C. 5:23-2.36, providing only a reference to N.J.A.C. 5:23-2.36 in Section 1107.

RESPONSE: The Department respectfully disagrees. This change is necessary due to P.L.2021, c.171, which supersedes the requirements set forth in the national model codes. This amendment

ensures that the building subcode contains all applicable requirements. Subchapter 2 contains administrative provisions; the accessibility standards are appropriately codified within the building subcode, N.J.A.C. 5:23-3.14.

16. COMMENT: The commenter states that the Department's proposed N.J.A.C. 5:23-3.14(b)10xiv refers to N.J.A.C. 5:23-3.36 and they assume that N.J.A.C. 5:23-2.36 was instead meant to be cited. The commenter recommends an editorial correction.

RESPONSE: The commenter is correct; upon adoption, this section is amended to utilize the appropriate cross-reference, N.J.A.C. 5:23-2.36.

17. COMMENT: The commenter recommends that the Department look at EVSE regulations of other States, such as California, and determine if New Jersey's approach is the best for the state. In addition, the commenter states the Department should provide several examples of how the requirements would be applied to various residential and commercial developments with parking, as it would be beneficial in visualizing the number of parking spaces required by law.

RESPONSE: This rulemaking implements the requirements of New Jersey State Law, P.L.2021, c.171. As such, the Department respectfully disagrees that other EVSE regulations need be reviewed.

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

## SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

### 5:23-2.36 Electric vehicle supply equipment and make-ready parking spaces

(a) Buildings containing five or more dwelling units of Groups R-2 or R-3 shall provide electrical vehicle supply equipment or make-ready parking spaces, as follows:

1. A minimum of 15 percent of the off-street parking **\*[required]\*** **\*approved\*** by a **\*[municipal ordinance]\*** **\*municipality\*** shall be electrical vehicle make-ready parking spaces. One-third of the required electrical vehicle make-ready spaces shall be provided with electrical vehicle supply equipment;

2. – 4. (No change from proposal.)

(b) (No change from proposal.)

## SUBCHAPTER 3. SUBCODES

### 5:23-3.14 Building subcode

(a) (No change.)

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

1.-9. (No change.)

10. Chapter 11, Accessibility, shall be amended, as follows:

i.-xiii. (No change.)

xiv. In Section 1107.2, Electrical vehicle charging stations, “N.J.A.C. \*[5:23-3.36]\* **\*5:23-2.36\*** and” shall be inserted before “Sections.” In addition, the exception shall be deleted.

xv. – lix. (No change.)