

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Adopted Amendment: N.J.A.C. 5:23-3.15

Proposed: April 18, 2022, at 54 N.J.R. 699(a).

Adopted: July 28, 2022, by Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Filed: August 24, 2022, as R.2022 d.120, **without change**.

Authority: N.J.S.A. 52:27D-119 et seq.

Effective Date: September 19, 2022.

Expiration Date: February 9, 2029.

Summary of Public Comments and Agency Responses

Comments were received from the Gay Activist Alliance in Morris County; International Association of Plumbing and Mechanical Officials (IAPMO); International Codes Council (ICC); Robert LaCosta; the Mechanical Contractors Association of New Jersey, Inc.; Mitchell Malec, a retired former employee of the Department of Community Affairs (“Department” or “DCA”); Municipal Construction Officials of New Jersey (MUNCO); New Jersey Building Officials Association; New Jersey State Association of Pipe Trades; New Jersey Plumbing-Heating-Cooling Contractors; New Jersey State League of Master Plumbers, Inc.; The New Jersey State Plumbing Inspectors Association; The New Jersey Society of Architects (AIA NJ); Dan O’Gorman, code official and licensed master plumber; Plumbers and Pipefitters Local Union No. 9; Plumbers and Pipefitters Local Union No. 322; Plumbers Union Local No. 24; The

Pride Center of New Jersey; Princeton University; Rockefeller Group; Larry Scorzelli; South Jersey Mechanical Contractors Association; and Target.

General Support and Opposition

1. COMMENT: Comments in support of the adoption of the 2021 edition of the National Standard Plumbing Code (NSPC) were submitted by the International Association of Plumbing and Mechanical Officials; the Mechanical Contractors Association of New Jersey; New Jersey State Association of Pipe Trades, which represents 10,000 members; New Jersey Plumbing-Heating-Cooling Contractors; the New Jersey State League of Master Plumbers, Inc.; The New Jersey State Plumbing Inspectors Association; Dan O’Gorman; Plumbers and Pipefitters Local Union No. 9, which represents 2,300 members; Plumbers and Pipefitters Local Union No. 322, which represents 1,800 members; Plumbers Union Local No. 24, which represents 1,300 members; and South Jersey Mechanical Contractors Association. The supportive comments stated that the NSPC has been in use in the State of New Jersey since the adoption of the Uniform Construction Code (UCC), N.J.A.C. 5:23-3.15, in 1977, and has always seamlessly interfaced with the other model codes. It was also stated that the continued adoption of the latest edition of the NSPC will prevent unnecessary costs, disruptions, and delays that would occur if a different code were adopted.

RESPONSE: The Department thanks the commenters for the support.

2. COMMENT: The Municipal Construction Officials of New Jersey, New Jersey Building Officials Association and two of its members, the New Jersey Society of Architects (AIA NJ), the Rockefeller Group, and Target were opposed to the adoption of the 2021 NSPC. The

commenters were in favor of the adoption of the 2021 International Plumbing Code (IPC) and pointed out that the Code Advisory Board (Board) recommended its adoption. The commenters opined that disagreeing with the Board is counter-intuitive, because 34 states adopt the IPC, and the other model codes adopted by the DCA are published by the International Code Council (ICC). The commenters wanted to know why the Department did not follow the recommendation of the Board. The commenters also noted that utilizing the NSPC makes prototype design difficult for large corporations.

RESPONSE: The Department respectfully disagrees that it is counter-intuitive to continue to utilize a well-understood and effective model code. As discussed in detail in the Response to Comment 4, the Department did undertake a thorough comparison of the 2021 editions of the NSPC and IPC and found no substantial difference in the model codes. While the Board makes a recommendation, the Commissioner has the authority to make the final decision pursuant to N.J.S.A. 52:27D-123. After review, the Commissioner found that, given the comparison, as well as supporting documents received from constituents in favor of both codes, the NSPC remains the appropriate model code for the State. In addition, many states utilize differing construction codes with a variety of requirements, thus, the Department respectfully disagrees that the adoption of the NSPC uniquely discourages prototype designs.

3. COMMENT: The Gay Activist Alliance in Morris County, Pride Center of New Jersey, and Princeton University expressed concern that the Department is proposing to adopt the NSPC with the understanding that it does not permit gender-neutral bathrooms and facilities. The commenters noted that this is troubling because of Governor Murphy's strong support of the LGBTQ+ community in the State. The commenter noted that the IPC allows for the design and

use of gender-neutral bathrooms and opined that the adoption of the NSPC sends the wrong message.

RESPONSE: Inclusivity in design is an important factor in adopting the updated model codes. There is nothing in the National Standard Plumbing Code that prohibits the design, installation, and/or use of gender-neutral restrooms. When the Department undertook its comparison of the NSPC and IPC, it was found that the fixture requirements in both codes are similar. In the NSPC, Table 7.21.1 provides the minimum fixture count for restrooms. The layout of that table is split by gendered restrooms; however, Section 7.21.9 allows for the use of family and assisted-use toilet rooms. These are single-user toilets that are commonly utilized as gender neutral restrooms. Similarly, in the IPC, Table 403.1 provides the minimum fixture count for restrooms, split by gender; however, Section 403.1.2 allows for the use of single-user toilet and bathing room fixtures.

The application of these codes to gender-neutral restrooms is not substantially different; thus, the Department intends to adopt the 2021 NSPC. The Department welcomes the use of gender-neutral facilities, and the NSPC, as proposed, would not prohibit the use of these facilities. Throughout the State, there are already many buildings that utilize entirely single-use facilities to protect the privacy of users and ensure accessibility by all genders.

Comments Received from the International Code Council (ICC)

4. COMMENT: The ICC stated that “the Department ignored the [Board’s] support for IPC when it should have given deference to the [Board] and construction stakeholders it represents.” The ICC then provided an example of a time where the Department noted in the past that the proposal reflected the advice of the Board and questioned why the Commissioner did not accord

the same deference to the Board in this instance, especially since the Board recommended the adoption of the IPC rather than the NSPC. The ICC also questioned what information was provided to the Commissioner in order for a decision to be made.

RESPONSE: The Department assures the ICC that the Board was not ignored. The decision to propose the 2021 edition of the NSPC was not taken lightly. Immediately upon the recommendation of the Board, the Department undertook a section-by-section comparison of both codes, spoke with the Board, and each of its subcode committees, and received letters of recommendation from many interested parties, including union and non-union licensed master plumbers, State plumbing subcode officials, other State subcode officials, and corporations. All of this information, as well as the minutes and recommendations of the Board, were provided to the Commissioner. The Commissioner has the authority to make the final decision pursuant to N.J.S.A. 52:27D-123, and found that, given the comparison, as well as supporting documents received from constituents, and the Board and Subcode Committee reports, the NSPC remains the appropriate model code for the State. The NSPC is a clear and specification-driven code that clearly outlines requirements in great detail, where the IPC relies on manufacturer instructions and performance-based provisions. Additionally, many groups in favor of the IPC noted that its use would align with the other adopted I-Codes in the State and would not require interfacing of the different model codes; however, the Department has utilized the NSPC since the initial adoption of the UCC, and it has not been burdensome for the Department or for code users to interface these requirements.

5. COMMENT: The ICC noted that the Department performed a comparison of the IPC and NSPC and found no substantial differences between the codes, and because of this, retraining the

State's designers, installers, plumbing inspectors, and licensed master plumbers should not be unduly burdensome.

RESPONSE: While the Department agrees that the technical requirements of these codes are not substantially different, the overall layout of these codes is entirely different, and would lead to well-versed designers, installers, plumbing inspectors, and licensed master plumbers needing to entirely relearn the location of information they have had immediate access to for many years.

6. COMMENT: The ICC noted that it provided a stand-alone "New Jersey Plumbing Code" that incorporated both commercial and residential provisions taken directly from the IRC, so that the entire plumbing code was coordinated into one book. The ICC stated that it did so at the suggestion of multiple licensed plumbers in the State and provided copies of this new, hybrid code to the Department and to the Board and asked if the code was reviewed by both the Department and the Plumbing Subcode Committee of the Code Advisory Board.

RESPONSE: While the comparison of the NSPC and IPC was performed before the hybrid code was provided to the Department, Department staff did review the code provided by the ICC. In addition, the Chair of the Plumbing Subcode Committee was provided a copy for review. The Department thanks the ICC for these efforts in the Department's consideration of the updated model codes; however, the final decision remains the adoption of the 2021 NSPC. Another factor in this decision was due to the potential confusion and multiplicity of standards should a new model code be utilized; this is because pursuant to the Uniform Construction Code Act (Act) at N.J.S.A. 52:27D-123b(4), the Department must either adopt the current text of the model code, or retain language from a previously adopted code. This could lead to the need for code

users to use the language and requirements of two model codes where an amendment is needed to a specific section.

7. COMMENT: The ICC stated that “the Department’s decision to adopt the NSPC runs counter to New Jersey Statute, which favor [sic] the adoption of the IPC” and asked how the Department defined the term national model code, and why the NSPC is consistent with that definition since it is only adopted at the Statewide level in New Jersey. The ICC also noted that, because New Jersey is the only state to adopt the NSPC on a Statewide level, it is predominantly updated by stakeholders living in New Jersey. The ICC argued that, since the IPC has been adopted in 34 states, as well as Washington D.C., Puerto Rico, and Guam, it better reflects the requirement within the Act to adopt a national model code. ICC provided further arguments that the adoption of the NSPC runs counter to the Act, stating that the use of multiple codes increases construction cost and requires design professionals, contracting firms, and contractors working across state lines to learn additional codes to work in the State. The ICC noted that the UCC is intended to avoid restrictive and unnecessary construction regulations and opined that the adoption of the IPC would eliminate the “unnecessary and cumbersome task of coordinating potentially conflicting code provisions created by using codes from two different organizations.”

RESPONSE: In accordance with the Act, at N.J.S.A. 52:27D-122.2b, national model codes are any codes adopted by a national model code adoption agency. Both the ICC and IAPMO are examples of agencies that adopt and develop model codes. The Act also specifically references the NSPC at N.J.S.A. 52:27D-122, regarding the use of national model codes. This section also requires the Department to adopt codes in which “New Jersey is a part of the adoption” when the codes are updated. As such, the Department respectfully disagrees that the Act favors the IPC.

Additionally, although many stakeholders submitting code changes to the NSPC are from New Jersey, the update process is not limited to New Jersey stakeholders; anyone may submit changes to the Committee for review and approval.

Further, the Department disagrees that the adoption of the NSPC poses an undue burden across State lines. Local codes are commonplace; many states, counties, or cities adopt local amendments to their model codes, which poses additional learning curves for developers and code users in the area. The NSPC has been adopted and updated since the initial adoption of the UCC, and ensuring that these codes are coordinated is not cumbersome; the NSPC has interfaced with the other subcodes seamlessly for many years and continues to do so.

8. COMMENT: The ICC noted that the Department of Veteran Affairs (VA) requires the IPC for VA construction. Additionally, the ICC noted that the IPC is the only consensus-based plumbing code identified in FEMA's approved list of consensus-based codes and standards for FEMA-funded post-disaster reconstruction. The ICC argued that these entities do not recognize the NSPC.

RESPONSE: In review of any potential conflicting codes, the Department found that the Department of Veteran Affairs Plumbing Design Manual, PG 18-20, frequently cites the ability to use the requirements of the local authority having jurisdiction, which means that the NSPC is not precluded for use in VA construction. Additionally, FEMA provided a letter, dated July 29, 2021, which confirms that public assistance funding is not contingent on state, tribal, territorial, or local jurisdictions adopting a particular set of codes; rather, FEMA policy requires that public assistance-funded projects must comply with the latest published editions of the relevant, identified consensus-based codes or the jurisdiction's similar adopted code. As such, FEMA

funding would not be denied based on the code utilized in the State, and construction that complies with the NSPC does not present a conflict with FEMA requirements.

9. COMMENT: The ICC noted that one pillar of the Act is to prevent unnecessary increased construction costs and asked whether the Department took into consideration the potential rating reduction in the Verisk/ISO, Building Code Effectiveness Grading Schedule (BCEGS) municipal scoring system by not adopting a fully coordinated set of codes.

RESPONSE: Based on current data from Verisk, an insurance rating bureau, the State of New Jersey currently scores as a Class 4 State for residential construction and a Class 3 State for commercial construction, which is on par, and in some situations, a better rating, than surrounding states. As such, it does not appear that the adoption of the NSPC impacts the State's score, which is stated by Verisk as based on building code enforcement efforts, code administration, plan review, and inspection. New Jersey has been at the forefront of code enforcement since the adoption of the UCC in 1977 and remains so by the adoption of updated national model codes every three years.

10. COMMENT: The ICC disagreed with the Department's Social Impact statement in the notice of proposal and stated that, because the NSPC is a stand-alone code, the Department does not provide a set of technical standards. The ICC questioned how the NSPC provides a greater, significant social impact than the IPC would. The ICC mirrored the comments received regarding gender neutral restrooms and asked where the provisions for accessible fixtures are within the NSPC.

RESPONSE: The UCC is the technical set of standards, comprised of administrative requirements and various national model codes, including those published by the ICC, IAPMO, and the National Fire Protection Agency (NFPA). The purpose of the Social Impact statement is to explain that updated national model codes create more innovative construction and ensure the highest level of protection in the standards; it was not drafted as a comparison of the multitude of existing plumbing standards. Gender neutral restrooms are addressed in the Response to Comment 3, and Chapter 7 of the National Standard Plumbing Code notes that requirements for accessible plumbing fixtures are contained within ICC A117.1, which the Department adopts within the building subcode.

11. COMMENT: The ICC disagreed with the Department's Economic Impact statement in the notice of proposal, stating that the New Jersey Builders Association (NJBA), AIA-NJ, and National Association for Industrial and Office Parks (NAIOP) all supported the adoption of the IPC as a means to reduce costs to home buyers. The ICC asked if the Department agrees that the adoption of the IPC would benefit renters and homeowners, or, if not, that the Department disagrees with NJBA, AIA-NJ, and NAIOP. The ICC argued that the IPC enables cost savings approaches through the installation of unconventional drainage methods that are not designed by a design professional; relining of existing underground sewers and building drains; and does not require siphonic roof drainage to be individually designed by a licensed professional engineer or approved by the local enforcing agency. The ICC asked if the same cost savings measures are included in the text of the NSPC, and if not, how does that impact the associated cost or timeframe of a construction project.

RESPONSE: During the Department's comparison of the two codes, much consideration was given regarding potential economic impacts. Ultimately, it was determined that the requirements set forth in the IPC did not provide significant construction cost savings that would warrant a change in model code. Regarding the noted cost savings measured, the Department's requirements are as follows:

- For unconventional drainage and venting methods, the NSPC does not contain the requirements for the person responsible for the design of systems. This is regulated by the rules promulgated by the licensing boards within the Division of Consumer Affairs, Department of Law and Public Safety. Based on those rules, the requirements for design are contained within the administrative provisions of the UCC, specifically N.J.A.C. 5:23-2.15(f)1vii(1), which allows for the Licensed Master Plumber to design drainage and venting methods in Class 3 structures; a design professional must design drainage and venting methods for all other structures. This is a requirement of the UCC and would apply regardless of the adopted national model code. Ensuring that draining and venting methods are designed by the appropriate entity does not pose an undue burden on construction costs, as this requirement ensures that structures are designed safely and appropriately.
- The NSPC and UCC are both silent on the rehabilitation and relining of existing underground sewers and building drains. This means that there is nothing prohibiting the relining of existing sewers or requiring that they be replaced. This decision rests with the local enforcing agency. As such, the NSPC does not impose a cost or environmental impact regarding existing sewers and building drains.

- Similar to the first point above, siphonic roof drainage systems are required to be designed by either a licensed master plumber for Class 3 structures or a design professional for all other structures. This is not in accordance with the NSPC, but with the UCC, and is vital in ensuring the design is appropriate for the structure. In addition, these systems would require review and approval by the local enforcing agency. This review aligns with, for example, other reviews for drainage, including the drainage systems required pursuant to the International Residential Code at R403.1, which requires an approved point of drainage.

In short, the NSPC is silent on all three of the points noted by the ICC; however, for two of the three, the UCC provides administrative rules based on the licensing Board requirements that are necessary to ensure safe and compliant designs. The Department respectfully disagrees that these requirements within the IPC would lead to cost savings, because they would be in direct conflict with the administrative requirements of the UCC, which supersede any administrative language in a model code.

12. COMMENT: Regarding the Department's Jobs Impact statement in the notice of proposal, the ICC noted that pursuant to the NSPC, design firms and contractors may opt out of bidding on jobs in New Jersey since the NSPC is not adopted in any other state. The ICC asked if the Department considered the effect of the loss of potential construction activity.

RESPONSE: The longstanding adoption of the NSPC has not deterred construction throughout the State. The Department's most recent construction data, from March 2022, shows that over \$2 billion dollars of construction work was authorized throughout the State. Given the longstanding

adoption of the NSPC, and the up-to-date construction figures, the Department does not believe that the adoption of the updated NSPC will deter construction.

13. COMMENT: The ICC recognized the longstanding relationship between the ICC and the Department and thanked the Department for its time and consideration. The ICC recommended that the Department not adopt this rulemaking and instead propose the 2021 IPC.

RESPONSE: The Department thanks ICC for its continued support and relationship and looks forward to its continued mutually beneficial relationship. However, at this time, the Department respectfully declines the recommendation for adoption of the 2021 IPC.

Comments to Specific Sections of the Plumbing Subcode

14. COMMENT: One commenter recommended the Department revise the text at N.J.A.C. 5:23-3.15(a)1 and 2 to include the word “Illustrated” in the title of the National Standard Plumbing Code.

RESPONSE: The Department respectfully disagrees that this change is necessary. The title, as proposed, is well understood without the term “Illustrated.”

15. COMMENT: One commenter took opposition to the Department’s proposed change at N.J.A.C. 5:23-3.15(b)7iv. The commenter felt that the argument for internal consistency with Section 7.21.6a is erroneous and that the plumbing subcode does not require these fixtures “just because Section 7.21.6 contains provisions for fixture requirements for special occupancies.” The commenter further requested that the Department modify the section as follows: “For accessible requirements, see local, State, and national codes.” The commenter also

recommended that the Department continue to delete both sentences from Note 1 of Table 7.21.1 or modify the sentences to state, “for accessible requirements, refer to the Barrier Free Subcode. Additional fixtures may be provided where environmental conditions or special activities may be encountered as expressed in Section 7.21.6.”

RESPONSE: The Department respectfully disagrees with the commenter. The proposed amendment ensures internal consistency within the plumbing subcode. Because Section 7.21.6a is adopted by the Department, Note 3 of Section 7.21.1 should be adopted for consistency, and Note 1 is still deleted in this rulemaking. The language requested by the commenter is not necessary and the Department lacks the authority to incorporate this change into the plumbing subcode. In accordance with the Act, at N.J.S.A. 52:27D-123b(4), the Department must either adopt the newest edition of the model code or defer to a previous requirement of the code; the Department cannot add language that does not exist in the code.

16. COMMENT: The commenter opined that N.J.A.C. 5:23-3.15(b)7ix, which deletes Section 7.23 of the NSPC, would delete subsections that should be incorporated into the plumbing subcode. The commenter requested the Department include modified language to better meet the Department’s intention.

RESPONSE: The Department respectfully disagrees. This is a longstanding deletion; the only change proposed to this section in the rulemaking is to update the appropriate referenced standard for suction outlets. Pursuant to the Act, at N.J.S.A. 52:27D-123b(4), the Department lacks the authority to incorporate this modified language into the plumbing subcode, and the requested change is not necessary.

17. COMMENT: The commenter recommended that the Department incorporate PHTA and ICC into the acronyms listed at Section 18.2 of the plumbing subcode and that Table 18.1 be amended to include the ANSI/PHTA/ICC-7 standard.

RESPONSE: The Department disagrees that these changes are necessary. These terms and standards are clear throughout the subcodes of the UCC.

Federal Standards Statement

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

Full text of the adoption follows:

TEXT