

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

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

Authorized By: Lieutenant Governor Sheila Y. Oliver, Commissioner, Department of
Community Affairs.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-009.

Submit written comments by March 21, 2020, to:

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The agency proposal follows:

Summary

The Department of Community Affairs (Department) seeks to amend the Uniform Construction Code rules to bring them into line with both a 2013 law on permit updates and an Appellate Division decision requiring local code inspectors to secure administrative warrants in order to make a non-emergent entry onto a property without the owner's consent.

P.L. 2013, c. 123, enacted on August 9, 2019, addresses situations where an approved development project has not been completed and a new developer wishes to assume responsibility for the project. In those instances, it authorizes municipalities to adopt ordinances requiring a successor developer to furnish a replacement performance guarantee to assure the installation and maintenance of on-tract improvements and providing for the release of the predecessor obligor and surety. This statute includes a companion change to the State Uniform Construction Code Act (N.J.S.A. 52:27D-130), prohibiting local construction code enforcement agencies from approving applications for construction permit updates until receiving proof that the new owner has furnished an adequate replacement performance guarantee in a municipality that has adopted ordinances requiring the posting of a replacement performance guarantee. The proposed amendment at N.J.A.C. 5:23-2.16, incorporates this statutory requirement into the administrative rules.

The proposed amendments at N.J.A.C. 5:23-2.18 and 2.29 address the need to obtain an administrative warrant or other legal remedy when access is denied. In the case of *State v. Heine*, 424 N.J. 48 (App. Div. 2012, *cert. denied*) decided January 31, 2012, the Appellate Division held that the municipality could not enforce a violation notice issued under a local ordinance because of the failure of the local code official to obtain an administrative warrant or other legal remedy after being denied entry by the owner.

The Court pointed out that the requirement of an administrative warrant when entry is denied is set forth in the Hotel and Multiple Dwelling, Rooming and Boarding House, and Uniform Fire Code rules. In general, since the adoption of the Uniform Construction Code, denial of entry has not been an issue under the UCC rules because, the unsafe structure provisions or work without a permit aside, inspections are generally conducted at the request of

the property owner. Pursuant to N.J.A.C. 5:23-2.29, Entry, in the period before a certificate of occupancy is granted, the existence of an open permit constitutes a right of entry and enables code officials to make inspections; denial of access is the basis for issuance of a Notice of Violation. In light of the *Heine* case, however, it is deemed appropriate to have the UCC rules reflect the requirement for code officials to secure administrative warrants or other legal remedies in any case in which entry may be denied for any reason.

These proposed amendments were originally proposed on July 5, 2016, at 48 N.J.R. 1345(a). That previous rulemaking expired on July 5, 2017, pursuant to N.J.A.C. 1:30-6.2.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments improve the administration of the State Uniform Construction Code by incorporating an administrative warrant procedure that is prescribed in other codes and by incorporating a statutory requirement for replacement performance guarantees into the rules (at N.J.A.C. 5:23-2.16).

Economic Impact

These proposed amendments are not expected to have any economic impact. As discussed in the Summary above, the ability of municipalities to require a replacement performance guarantee and the requirement for proof that the replacement performance guarantee has been posted upon filing of a permit update for a change of ownership are statutory. The requirements for an administrative warrant do not have any independent economic impact. As demonstrated by the *Heine* decision, the requirement to obtain an administrative warrant already exists.

Federal Standards Statement

No Federal standards analysis is required because these proposed amendments are not being proposed 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 any Federal law, standard, or requirement.

Jobs Impact

The proposed amendments are not expected to have an impact on the generation or loss of jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments would impact the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments are not expected to impose any reporting, recordkeeping, or compliance requirements on small businesses or to require them to engage any professional services they would not otherwise need to engage. As stated in the Economic Impact above, inasmuch as the proposed amendments reflect existing legal requirements, there are no costs associated with these proposed amendments.

Housing Affordability Impact Analysis

It is not expected that the proposed amendments will have any impact on the affordability of, or average costs associated with housing because the proposed amendments concern the local code officials obtaining an administrative warrant prior to entering a subject's premises.

Smart Growth Development Impact Analysis

It is not expected that the proposed amendments will have any impact upon housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan because the proposed amendments concern the local code officials obtaining an administrative warrant prior to entering a subject's premises.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

5:23-2.16 Construction permits--procedure

(a)-(i) (No change.)

(j) Conditions of permit: The issuance of the construction permit shall be conditioned upon the following:

1.-3. (No change.)

4. That the owner, his agent, contractor, or other employees will assist the enforcing agency in its inspection work, if requested; [and]

5. That all escrows required to be paid by the applicant, pursuant to N.J.A.C. 5:23-4.17(d), in connection with work done under permits issued for development-wide violation

correction, pursuant to N.J.A.C. 5:23-2.35(a)1, have been paid unless there is an appeal pending. For purposes of applying this paragraph, any escrow due from any person or entity affiliated with the applicant by way of having any common officers, directors, or shareholders with at least a [ten] **10** percent interest shall be deemed to be due from the applicant[.]; **and**

6. That any change in ownership is reported through a permit update and that any required replacement performance guarantee has been furnished.

(k) (No change.)

5:23-2.18 Inspections

(a)-(h) (No change.)

(i) If the owner or occupant improperly denies entry to the construction official, the construction official, or his or her authorized representative, shall obtain an administrative warrant or other legal remedy to secure entry issued by a court of competent jurisdiction.

5:23-2.29 Entry

(a)-(d) (No change.)

(e) If the owner or occupant improperly denies entry to the construction official, the construction official, or his or her authorized representative, shall obtain an administrative warrant or other legal remedy to secure entry issued by a court of competent jurisdiction.

[(e)] **(f)** (No change in text.)