

COMMUNITY AFFAIRS

Division Of Codes And Standards

Carnival-Amusement Rides; Lead Hazard Abatement; Continuing Care Retirement

Communities; Uniform Construction Code; Planned Real Estate Development Inspection Fees

**Adopted Amendments: N.J.A.C. 5:14A-2.8; 5:17-2.3 and 2.4; 5:19-2.3 and 2.4; 5:23-4.19,
4.20, 5.21, 5.22, 8.9, 8.10, 8.11, 12.5 and 12.6; and 5:26-2.3 and 2.4**

Authorized by: Joseph V. Doria, Jr., Commissioner, Department of Community Affairs

Proposed: October 20, 2008 at 40 N.J.R 5895(a)

Adopted: January 22, 2009 by Joseph V. Doria, Jr., Commissioner,

Department of Community Affairs

Filed: February 3, 2009 as R.2009, d. 77, **without change.**

Authority: N.J.S.A. 5:3-39, 45:22A-35 and 52:27D-124, 358 and 436.

Effective Date: March 2, 2009.

Expiration Dates: May 19, 2013 (5:14A); November 30, 2010 (5:17);

November 20, 2013 (5:19); June 13, 2013 (5:23); June 22, 2011 (5:26)

JOSEPH V. DORIA, JR., Commissioner

The agency adoption follows:

Summary of Public Comments and Agency Responses: Comments were received from the following individuals and organizations: Timothy J. Touhey, Executive Vice President, New Jersey Builders Association (NJBA); Michael G. McGuinness, Chief Executive Officer, New Jersey Chapter, National Association of Industrial and Office Properties (NAIOP); Jack Kocsis, Jr., Chief Executive Officer, Building Contractors Association of New Jersey (BCANJ); Sidney L. Hofing, President, The Eagle Group, Inc.; Barbara Egger; Paul McArthur; Barbara Sachau; Lary I Zucker, Esq., Counsel, New Jersey Amusement Association; Jonathan Ely, President, Traveling Tykes Entertainment Corp.; William Reiss, Owner, Blue Sky Amusements & Entertainment Ltd.; Devin Johnston, NY Party Works; Brian Koshefsky, Vice President, Amazing Amusements & Entertainment Inc.; Anthony Casale, President, Fun Factory Amusements; Scott Weisberg, President, Everything Entertainment, Inc.; Mark Zientek, Owner, New Jersey Partyworks; Debbie Henderson, President/CEO, Air Castles and Slides, LLC; and Bob Kramarik Jr., President, Bobby K Entertainment Inc.

COMMENT: Under current economic circumstances, the fee increase would dampen a recovery of the housing market and the overall State economy. New housing sales cannot

compete with the large inventory of existing units, and any increase in the cost of new housing further hinders a recovery. In addition, the proposed fee increase would add to the cost of work on existing buildings, further exacerbating the current negative economy. The Department should wait until the housing market returns to healthy levels before increasing permit fees. (NJBA)

RESPONSE: The Department is the enforcing agency for the construction or alteration of single family homes only in those municipalities where the Department serves as the local enforcing agency because the municipality has opted not to form a local enforcing agency. Currently, there are 37 towns where the Department serves as the local enforcing agency. These municipalities accounted for less than one percent of the housing starts over the last three years, so the increased inspection fees to be charged by the Department would not impact housing construction or the cost of new housing. The increase in the statewide permit surcharge fee does affect all permits, but it is small—an increase from \$0.00265 per cubic foot of new construction to \$0.00334 per cubic foot. COMMENT: A fee increase would be counterproductive, because it would reduce new permit applications, thus resulting in even less revenue for funding code enforcement. A policy of increasing fees to make up for revenue shortfalls will only further strain this fragile economy. (NJBA)

RESPONSE: Any decision on whether or not to proceed with a development project is unlikely to be made on the basis of whether or not the inspection fee is increased.

COMMENT: The summary statement claims that fees have been unchanged since 2002. However, the permit surcharge fee was also raised by 40 percent in 2003, after being raised 19 percent in 2002. Thus, the proposed increase in the surcharge fee would represent an increase of 85 percent over the past six years.

RESPONSE: The commenter is correct in pointing out that the surcharge fee, unlike the inspection fees, was increased in 2003, as well as in 2002. However, that additional revenue was applied, by legislative enactment, to purposes other than support of the Department's code enforcement activities.

COMMENT: The Department is proposing substantial fee increases at a time when New Jersey's economy is in dire condition and the development industry is severely distressed. Applying the figures to two construction projects, a completed 1,263,434 square foot building and a proposed 1,579,077 square foot building for which approvals are in place, NAIOP found that fees would increase by \$189,239 for the first building and by \$236,517 for the second, an increase in building permit fees from \$0.523 per square foot to \$0.67 per square foot. (NAIOP)

RESPONSE: Current building data indicate that large projects are continuing to be built in New Jersey, current economic conditions notwithstanding. The increased revenue is needed in order to assure that code enforcement services are provided by the Department in a timely manner, with resultant savings to developers because of avoided delays. As noted previously, the Department's fee schedule applies only to code enforcement services provided by the Department, not to those provided by the local enforcing agencies that enforce the code in most municipalities. The permit surcharge, which is applied statewide, is very small as compared to the overall cost of construction.

COMMENT: A fall off in new construction would logically indicate that the Department should cut staff in order to stay within its budget. The proposal does not indicate that higher fees would lead to quicker response times or expedited permit processing. It therefore appears that the Department expects an already distressed development industry to fund the continuation of operations in the "business as usual mode" without consideration of the adverse effect this would

have on failing businesses. The current regulatory and fee burden has already contributed in some way to the economic slowdown and further fee increases are unreasonable in this economic climate. The State government's response to this economic slowdown must be bold, and should follow that of the private sector, which reduces its expenses to stay in operation. (NAIOP)

RESPONSE: The Department has not yet experienced any decline in the demand for its code enforcement services. While the construction of single-family housing has fallen dramatically, as stated above, the Department has not seen any significant decline in the issuance of permits for large projects. The Department's staff has been reduced as a result of early retirements and attrition. However, as stated in the summary statements accompanying the rule proposal, the Treasury Department began charging the cost of fringe benefits to the fees collected. While this is a legitimate cost of running the code enforcement programs, this cost was not included in the cost calculations in 2002 when the current fees were established. (See 40 NJR 5895) Even with reduced staff, the fee increase is needed to cover this sizable increase in program costs. By statute, the fees charged are to cover the cost of code enforcement. The Department does not agree that its fees and regulations are in any way a cause of the current national recession.

COMMENT: BCANJ recognizes that the Department relies upon permit surcharge fees to fund important regulatory work to ensure that construction in the State is performed safely and at a high standard and supports the Department in this effort. However, in today's strenuous economic climate, increasing the cost of construction would only restrain the growth of opportunities for redevelopment and the associated job creation. The fee increase would ultimately be the responsibility of the contractors and developers and under no circumstances would it enhance the faltering New Jersey economy. It is the wrong action at the wrong time and it should be withdrawn. (BCANJ)

RESPONSE: The increased fees are necessary in order to sustain a code enforcement system capable of protecting public health and safety, which is required at all times. Compared to all the other economic factors that would necessarily affect any decision on going forward with a construction project, the proposed increase in fees would not be a factor. Again, as stated above, the Department's Uniform Construction Code fee schedule would only apply in those limited situations where the Department serves as the enforcing agency. The statewide permit surcharge fee would have only a very minimal impact.

COMMENT: The purpose of the fee increase is not to improve services and programs to the construction community, but rather to "maintain the programs as self-supporting." BCANJ does not consider this to be a construction-related function, regarding it instead as an administrative, planning function not tied to construction permitting and inspection. (BCANJ)

RESPONSE: The commenter is not correct in considering maintaining the current level of code enforcement services to be other than a construction-related function. The Department must have sufficient revenue to provide the staff needed to ensure that code enforcement services are provided. The requirement that the fees cover the cost of code enforcement is statutory. This is a cost of construction and it was decided by the Legislature that this cost should not be borne by the all of taxpayers of the State.

COMMENT: New Jersey has done everything to make it an undesirable State in which to build and own properties because fees from various sources hit builders much harder than in any other state. As a small builder facing critical issues of higher real estate taxes, municipal assessments, affordable housing assessments, higher construction costs and higher utility costs, the commenter asks that Department not impose a substantial fee increase. (Hofing)

RESPONSE: The Department recognizes that builders face many economic pressures. However, failure to provide sufficient staff for prompt and adequate code enforcement would not be an appropriate response to this overall economic problem. There is also a cost associated with any unnecessary delay of a construction project.

COMMENT: The commenter believes that the Department's assertion that fees must be increased to maintain the capacity to perform services when construction starts to go up again makes no sense to taxpayers. There is no need to retain employees who are not needed at this time and are not expected to be needed for quite a while. (Egger)

COMMENT: The Department being fully staffed will not start the economic recovery. When the revenue in the commenter's business goes down, he lowers prices and reduces expenses. It seems that only the government can work in reverse. Small businesses are extremely frustrated with government regulation and the tax burden. (McArthur)

RESPONSE: As has been indicated, the demand for the Department's code enforcement services has not declined. The Department is not maintaining staffing at a level beyond that necessary to meet current demand. There have been staff reductions due to retirement and a hiring freeze. As stated above, the additional fee revenue is needed to cover costs, including the cost of fringe benefits, which were not being paid from fee revenue in 2002 when the fees last were increased.

COMMENT: The Department is not raising the fees enough. The developers have been having a field day on the citizens of this State. The builders have to start paying up; they have been existing on the backs of taxpayers. The permit surcharge fee should be \$0.99 per cubic foot, the minimum permit surcharge fee should be \$100.00, the Department permit fee should be \$0.50 per cubic foot and the plan review fee in all other buildings should be \$0.40 per cubic foot. Commercial farm buildings should pay \$50.00 per \$1,000 or part thereof because the agribusiness industry should not be allowed to continue paying less than everyone else. There should be an additional fee of \$90.00 per hour for review of any amendment or change to a plan that has already been released, since \$57.00 means that the taxpayers are paying for the service, which should be paid for by the people making changes. The rest of the fees are much too low, considering the cost of living in New Jersey, and should be raised by one thousand percent. (Sachau)

RESPONSE: In the judgment of the Department, the proposed increased fees would adequately cover the cost of code enforcement. The Department does not agree that builders and developers have not paid fees in the past that were sufficient to cover the cost of code enforcement. In any event, fee increases exceeding those that were proposed, such as those suggested by the commenter, cannot be imposed on adoption.

COMMENT: The members of the New Jersey Amusement Association (NJAA) are struggling with the economy and are now facing increased costs of compliance with new and pending rules issued by the Department. Members of the NJAA simply cannot afford a 26% increase at this time. Spreading out any increase over a four year period would ease the burden on the industry. (Zucker, NJAA)

RESPONSE: The Department recognizes that the current economic conditions are hard on businesses, especially those that rely on consumers spending money for entertainment. However, the Department has never generated enough revenue in the Carnival and Amusement Ride Safety Program to cover its expenses. The Department traditionally used other funds to help make up for the deficit. However, there are virtually no sources that the Department can

rely on to help pay for programs that are intended to be self supporting. Therefore, the increase is necessary.

COMMENT: It is a struggle for the commenter to pay the current carnival-amusement ride fees and a 26% increase will make that struggle more difficult. The economy is in turmoil, the commenter's business is suffering, and 2009 looks bleaker. Organizations are cutting back in the spending on rides. Many companies will have to put equipment that is already permitted out of service due to the proposed fee increase, which will result in a reduction of permit revenue. (Kramarik; Koshevsky; Casale; Weisberg; Zientek)

RESPONSE: As discussed above, the current fees are not adequate to fund the program. The fee increase for the largest rides will be \$156.00 per year. Spread over the course of a year, such an increase cannot be considered a real factor in an owner determining whether a ride will be opened. The \$156 dollar fee increase, when dispersed over all of the users of the ride over the season, should have little impact when applied to the price of each ticket sold. While the Department agrees that, under the current economic conditions, a fee increase is not ideal, it will only marginally affect ridership, if at all, compared to the consumer's overall choice to cut its discretionary spending. Some people may choose not to attend amusement parks or carnivals, but that decision will be independent of the fee increase because of the relatively small impact it should have on rental fees or ride tickets.

COMMENT: The burden of the Department's carnival-amusement ride fees falls disproportionately upon small and medium-sized operators, while large amusement parks and shows are charged less than they should be charged. The fees paid by the commenter to the Department currently account for 3 percent of his gross receipts. This is an unacceptable burden that does not comport with the time or effort invested by the Department in regulating his business. Given the annual inspection takes only a couple of hours and the commenter's only other contact with Department inspectors is the occasional spot check at an event, the commenter views the fees as just another tax. The commenter suggests that the Department cover its costs by imposing fees based on large ridership volume and by charging higher fees for "super rides." He objects to having to pay \$400 to register a kiddie trackless train, while Great Adventure pays only \$600 to register their Kingda Ka ride. He also believes that the net effect of the fee increase will be a reduction in revenue as rides are taken out of operation in response. (Ely)

RESPONSE: The fee for a trackless train and other "kiddie rides" is \$252.00. The Department cannot perform its mandated enforcement functions for less without subsidizing the program from some other funding source. Currently, there are no other funding sources available. The law calls for these enforcement programs to be fee-supported. There is no basis for subsidizing this enforcement effort. Also, ridership is not an adequate way of determining the fee. To the greatest extent practical, the fees are based on the service provided, which the Department believes is more appropriate than basing the fee on the operator's financial ability to pay for the service. In addition, the Department suspects most ride operators would not want the Department auditing their ridership and financial information. Currently, the fee for a super ride is 300% of what the fee for a "kiddie ride" is. The Department will consider whether the fees for "super rides" are commensurate with the service being provided by the Department. However, such a change cannot be made as part of this rule adoption.

COMMENT: The commenter asks what would warrant a 26% rate increase for carnival-amusement rides. He thought that the purpose of the Department was to benefit the community, not to make money. (Reiss)

RESPONSE: As discussed above, the Carnival and Amusement Ride Program has traditionally operated at a deficit. The change will not increase the revenue of the program above its expenses.

COMMENT: The commenter currently is permitted on all ride equipment, at great expense since they are a small company. They cannot raise their prices because people will not pay more for rentals. With an added increase, it will be increasingly difficult to make a profit and the commenter therefore strongly opposes the proposed increase. (Johnston)

RESPONSE: If the ride is rented with any regularity, the increase in fee will result in a rather modest increase in rental fee. It has been the Department's experience that the vast majority of rides associated with the rental industry are classified as either "inflatable rides" or "kiddie rides." The fee for these types of rides is increasing by \$52 a year. If the ride is rented frequently enough, this will mean a rather modest increase if the cost is to be transferred on to the renter.

COMMENT: The commenter's company is the only inflatable ride that she knows of that has never had an accident. They have passed all inspections without problems and have never been fined. They have received an award letter for their safety record and represent all that is good in the industry. Nonetheless, their revenue was down by 20.9 percent in the past year as a result of the loss of repeat customers who had lost their jobs. The proposed fee increase is too high and is not based on any tangible numbers. Businesses need the government to help them succeed. The commenter employs lots of college students and teachers and a U.S. Marine Corps veteran. The burden of increased fees comes at a time when working families have less money to spend on recreation. The commenter sees her business as good for families and their health and wellbeing. The commenter recommends reducing inspection costs by inspecting every other year, or staggering inspections throughout the year. She commends the Department's inspectors for the good job they do and appreciates their efforts. However, though she follows all the rules, pays her debts and competes fairly, she cannot catch up and make up last year's loss with a 26% fee increase. (Henderson)

RESPONSE: The fact that the commenter recognizes that there is a high incidence of injuries on inflatable rides seems to support maintaining the current inspection level. The Department understands the commenter's concerns about fee increases during the current economic conditions; however, the Department believes that the current level of inspection should be maintained, and the only way to do that, and have the unit be fee-supported, is to increase the fees.

Federal Standards Statement

No Federal standards analysis is required because these amendments are not being proposed 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.