

**COMMUNITY AFFAIRS**

**Division Of Codes And Standards**

**Uniform Construction Code**

**Certificate requirements – Temporary Certificate of Occupancy**

**Proposed Amendment: N.J.A.C. 5:23-2.23**

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

Authority: N.J.S.A. 52:27D-124

Proposal Number: PRN 2008-

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

Submit written comments by: February 4, 2009 to:

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**JOSEPH V. DORIA, JR.,  
Commissioner**

The agency proposal follows:

### **Summary**

This proposed amendment to N.J.A.C. 5:23-2.23(g) would delete the requirement that a temporary certificate of occupancy (TCO) be issued for a period of not less than 60 days. While issuance of a TCO for a period of at least 60 days generally makes good administrative sense, both in order to allow sufficient time for work not affecting health and safety to be completed and to avoid the need for excessive paperwork, there have been instances in which the inflexibility that it establishes has hampered the ability of code officials to get issues resolved expeditiously.

The proposal would also prohibit issuance of a TCO for any newly-constructed building or structure, or addition to a building or structure, that is subject to the non-residential development fee established pursuant to section 35 of P.L. 2008, c.46 unless and until the applicant provides documentation evidencing payment of the fee to the Treasurer of the State of New Jersey or, where authorized in accordance with section 35 of P.L. 2008, c.46, to the municipality. P.L. 2008, c.46 requires payment of this fee, as a precondition to the issuance of a certificate of occupancy, but is silent as to temporary certificates of occupancy. The requirement that payment of the fee be made as a precondition to the issuance of a certificate of occupancy is restated in the proposal.

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

### **Social Impact**

To the extent that code officials would be able to use shorter timeframes for TCOs, and extensions of TCOs, in order to get issues addressed promptly, the difficulties that may be caused by projects not being completed may be reduced.

Making payment of the nonresidential development fee, where applicable, a precondition to the issuance of a TCO, as well as of a CO, to which it is already applicable in accordance with P.L. 2008, c.46, should facilitate collection of the fee at an earlier point in time than would otherwise be the case, thus making money to support construction of affordable housing available sooner.

### **Economic Impact**

Issuance of a temporary certificate of occupancy may be economically beneficial to persons owning or occupying the property for which it is issued because it allows occupancy at an earlier date than might otherwise be allowed. The proposed amendment might necessitate an acceleration of the construction schedule in order to address the conditions of the TCO more expeditiously than might otherwise have been done. This may, in some cases, have cost implications.

Making payment of the nonresidential development fee, where applicable, a precondition to the issuance of a TCO, as well as of a CO, to which it is already applicable in accordance with P.L. 2008, c.46, would require developers and owners of nonresidential buildings subject to the fee to make payment sooner than would otherwise be the case.

### **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.

### **Jobs Impact**

The Department does not anticipate that any jobs will be created or lost as a result of these proposed amendments.

### **Agriculture Industry Impact**

The Department does not anticipate that the proposed amendments would have an impact on the agricultural industry.

### **Regulatory Flexibility Statement**

Because the administrative structure of the Uniform Construction Code is not changed, the proposed amendments would not impose any recordkeeping or reporting requirements on "small businesses," as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 *et seq.* Small businesses, like any other entities undertaking construction, may have to comply with certificate of occupancy requirements sooner in those cases where issuance or extension of a TCO for less than 60 days is warranted. The rules would still require that a reasonable period of time be allowed.

### **Smart Growth Statement**

To the extent that the proposed amendment to require payment of the nonresidential development fee, where applicable, as a precondition to the issuance of a TCO results in more rapid collection of the fees and their use to subsidize construction of affordable housing, it will advance the achievement of "smart growth" and the implementation of the State Plan by contributing to the revival of older urban areas.

### **Smart Growth Impact**

Revenue received from non-residential development fees would be available to provide funding to subsidize housing production within planning areas one and two and within designated centers under the State Development and Redevelopment Plan.

### **Housing Affordability Impact**

This proposed amendment might apply to any temporary certificate of occupancy issued for any sort of building. If adopted, it would allow greater flexibility in determining the amount of time that would be allowed for completion of work not affecting health or safety after occupancy is allowed. The Department expects that shorter time frames would be more likely to be used in commercial construction and does not expect that the elimination of the minimum time period for TCO's would have any material effect upon the cost of supply of affordable housing. However, to the extent that making payment of the nonresidential development fee a precondition to the issuance of a TCO results in earlier payment of the fee by owners and developers, funds will be made available sooner to subsidize the production of affordable housing.

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

#### **5:23-2.23 Certificate requirements**

(a) – (f) (No change.)

(g) Temporary certificate of occupancy: Upon the written request for a temporary certificate of occupancy by the holder of a permit, the construction official shall issue, and may renew, a temporary certificate of occupancy for a building or structure or part thereof when the work covered by the permit shall have been substantially completed, provided that such portion or portions may be occupied safely prior to full completion of the building or structure without endangering health or safety.

1. The temporary certificate of occupancy and each subsequent renewal shall list the work to be completed and shall be valid for a reasonable period of time to complete the specified work [, but not less than 60 days]. The municipal tax assessor shall be notified when the temporary certificate of occupancy is issued.

2. (No change.)

**3. No temporary certificate of occupancy shall be issued for any newly-constructed building or structure or part thereof, or addition to a building or structure or part thereof, that is subject to the non-residential development fee established pursuant to section 35 of P.L. 2008, c.46 unless and until the applicant provides official documentation evidencing payment of the fee to the Treasurer of the State of New Jersey or, where authorized in accordance with section 35 of P.L. 2008, c.46, to the municipality.**

(h) (No change.)

(i) Application: A written application for a certificate of occupancy shall be filed with the enforcing agency by the owner or his agent. The application shall include the following:

1. - 7. (No change.)

**8. In the case of any newly-constructed building or structure or part thereof, or addition to a building or structure or part thereof, that is subject to the non-residential development fee established pursuant to section 35 of P.L. 2008, c.46, official documentation evidencing payment of the fee to the Treasurer of the State of New Jersey or, where authorized in accordance with section 35 of P.L. 2008, c.46, to the municipality.**