

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Adopted Amendment: N.J.A.C. 5:23-2.34

Proposed: June 5, 2017 at 49 N.J.R. 1275 (a)

Adopted: December 18, 2017, by Charles A. Richman, Commissioner,

Department of Community Affairs.

Filed: _____, 2017 as R.2017 d. _____, **with technical changes** not

requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date:

Expiration Date: March 25, 2022

Charles A Richman
Commissioner

Summary of Public Comments and Agency Responses:

The comments below were sent by a retired employee of the Department of Community Affairs, Mitchell Malec, and Robert A. Briant, Jr., CEO of the Utility & Transportation Contractors Association.

1. COMMENT: The commenter cites the minimum safeguards for buildings regulated by the one- and two- family dwelling subcode at proposed N.J.A.C.5:23-2.34(b)1, and asks whether it is the Department's intent that these minimum safeguards also be the maximum safeguards. The commenter asks if a construction official may impose safeguards past the minimum requirement.

RESPONSE: A construction official may not impose construction safeguards that exceed the requirements adopted by rule.

2. COMMENT: The commenter states that, with respect to the safeguards listed at proposed N.J.A.C.5:23-2.34(b)1, the Department should also include section 3301 of the building subcode since it covers "public", "workers", and "adjoining property", while the proposal is limited to protection of adjoining properties and public rights of way. The commenter suggests that the Department could list the sections that are not applicable to one- and two-family dwellings.

RESPONSE: The Department posits that sections of the building subcode listed will provide the necessary protection. The protection of workers is secured by the Occupational Safety and Health Administration (OSHA) regulations which are preemptive. And it is the Department's position that the list of sections applicable makes the requirement clear.

3. The commenter recommends removing the comma after "sidewalk" at proposed N.J.A.C. 5:23-2.34(b)2.

RESPONSE: The Department has amended the rule upon adoption to remove the comma after sidewalk at N.J.A.C. 5:23-2.34(b)2.

4. COMMENT: The commenter states that the Department should add text in chapter 33 of the building subcode to include "public right of ways".

RESPONSE: This comment is outside the scope of the proposal. In any event, the Department appreciates the commenter's suggestion, and believes that the rule as proposed sufficiently refers to public rights of way, as in N.J.A.C. 5:23-2.34(b)2, "Where necessary to protect the public right of way....".

5. COMMENT: The commenter states that the Department should elaborate on the definition of a crane to include details beyond height and rated tonnage. The commenter then gives examples of types of cranes and asks whether or not these fit the description of the types that are covered by the regulations. The commenter asks for an explanation of

the height and tonnage thresholds proposed. The commenter also asks whether the rules apply only to cranes used in construction and not those used to deliver materials.

RESPONSE: The thresholds are drawn from the New York City requirements. As stated in the summary accompanying the proposed rule, the Department reviewed both the New York City and the Jersey City requirements for cranes in the preparation of this rule. While other thresholds or descriptions could have been considered, it was decided to use the thresholds proposed. If at some point in the future it is determined that different thresholds are necessary to provide adequate protection of the public, the Department will propose amendments to these requirements. The requirements would apply to any crane meeting the established thresholds, whether being used for actual construction or for the delivery of materials, on a site where the work being performed is within the jurisdiction of and subject to the permitting requirements of the Uniform Construction Code.

6. COMMENT: The commenter suggests that closing the street and sidewalk while the crane is in operation is not adequate to protect an adjoining street or sidewalk, or other public right of way.

RESPONSE: The Department disagrees that closing the street and sidewalk would not be an adequate measure. The protection extends to any streets or sidewalks that the crane is sited on or lifts over.

7. COMMENT: The commenter asks whether related NJ Department of Labor & Workforce Development provisions and OSHA requirements have been taken into consideration.

RESPONSE: As stated above, the OSHA requirements are adopted for the protections of workers and are preemptive. The Department of Labor and Workforce Development requirements have been taken into consideration. These requirements (N.J.A.C. 12:121) address the licensing of crane operators.

8. COMMENT: The commenter asks if the cranes that the Department is proposing to regulate require licensure or qualified operators, and recommends that the proposed regulations require that a copy of the crane operator license be provided.

RESPONSE: The Department of Labor and Workforce Development uses different, broader thresholds for the requirement for a licensed crane operator. (See the definition of “crane” at N.J.A.C. 12:121-2.1.) than those used in this rule. While it is anticipated that all of the cranes subject to N.J.A.C. 5:23-2.34(c) would require an operator licensed by the Department of Labor and Workforce Development, the crane operator’s license is not part of the documentation required to obtain a construction permit. The requirement for a licensed operator is well established and there is no need for the redundancy of requiring that a copy be submitted with the permit application. Furthermore, for companies with multiple licensed operators, it may not be known which operator may be assigned to a particular job site.

9. COMMENT: The commenter suggests that the Department reexamine the New York City crane safety requirements since the proposal, which is modeled after the New York City and Jersey City requirements, differs from the New York City requirements in some respects. The commenter cites the 2008 and 2014 NY City Building Code, Chapter 33.

RESPONSE: The New York City and Jersey City requirements were reviewed and used in the preparation of this rule. The Department did not make any representation that the instant rule does not differ from the New York City requirements nor is it necessary that the two be identical in all respects.

10. COMMENT: The commenter summarizes the proposal and expresses support for the proposed requirements.

RESPONSE: The Department appreciates the commenter's support.

11. The commenter strongly requests that "all approvals, releases, safeguard measures, sidewalk and street bridging design and approvals, and approvals from local police, traffic safety department or the appropriate county or State authority must be the responsibility of the Owner of the construction, rehabilitation, or demolition project."

RESPONSE: The Department appreciates the commenter's recommendation, and refers the commenter to N.J.A.C. 5:23-2.34(a) Protection of adjoining properties, as amended by this rule, which states that "Owners who undertake construction, rehabilitation, or demolition work at their

properties shall protect adjoining properties and public rights of way from damage or hazardous conditions caused by the work.” Responsibility always rests with the owner. Responsibility may also rest with a contractor or design professional or any other entity signing the permit application as the agent for the owner.

Federal Standards Statement

A Federal Standards analysis is not required because the amendment is not being adopted under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to a Federal law, standards, or requirements.

Full text of the adopted amendments follows (addition to the proposal indicated with asterisks *thus*; deletion from proposal indicated in brackets with asterisks *[thus]*):

5:23-2.34 Protection of adjoining properties and public rights of way

(a) (No change.)

(b) The measures to be taken to safeguard adjoining properties or public rights of way shall be submitted with the permit application for review and approval by the construction official. For projects undertaken using partial filing or partial releases, such measures shall be submitted for review and shall have been approved prior to the issuance of a construction permit for the portion of the work requiring the safeguarding of adjoining properties or public rights of way. Effective (90 days from the effective date of this amendment):

1. (No change.)

2. Where necessary to protect the public right of way, sidewalk*[,] or street bridging, designed in accordance with the applicable requirements of the building subcode, shall be installed over public rights of way to protect persons and vehicles. Construction documents prepared by a design professional shall be submitted and released prior to the installation of sidewalk or street bridging. The sidewalk or street bridging shall be inspected and certified by the licensed design professional prior to the start of construction work that may threaten the public right of way. The released drawings shall be available, upon request, at the site while the sidewalk or street bridging is in place.

(c) (No change.)