

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Uniform Construction Code**

**Adopted Amendments: N.J.A.C. 5:23-2.6, 2.15, 2.15A, and 2.38**

Proposed: October 19, 2020, at 52 N.J.R. 1883(a).

Adopted: June 1, 2021, by Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Filed: July 13, 2021, as R.2021 d.082, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: August 16, 2021.

Expiration Date: April 22, 2022.

**Summary of Public Comments and Agency Responses:**

Comments were received from John Drucker, a fire protection and electrical subcode official, and Mitchell Malec, a former employee of the Department of Community Affairs (Department).

1. COMMENT: The commenter expressed support for the proposed amendments at N.J.A.C. 5:23-2.15(f), stating that they will streamline the design and permitting process for smaller projects in Class 3 buildings.

RESPONSE: The Department thanks the commenter for his support.

2. COMMENT: The commenter sought clarity regarding the Department's usage of "hospitality room" at N.J.A.C. 5:23-2.6(b)4, stating that, although the notice of proposal summary references the definition found at N.J.A.C. 5:15, the rule text itself does not define "hospitality room" or

reference the N.J.A.C. 5:15 definition. The commenter inquired into whether the term is invoking a previous usage, found in the July 17, 2017 New Jersey Register at 49 N.J.R. 1963(a). The commenter recommended that the Department provide a definition of “hospitality room,” reference the N.J.A.C. 5:15 definition, or both.

RESPONSE: The description of hospitality rooms at N.J.A.C. 5:23-2.6(b)4 provides that the hospitality room is used to accommodate fewer than 15 persons for emergency shelter for fewer than 15 consecutive days or 50 calendar days. This aligns with the definition of hospitality room found at N.J.A.C. 5:15-2. Because these specifications match the language of the defined term, the Department disagrees that there is a need to include a definition of the term. This formatting also maintains consistency with the rest of N.J.A.C. 5:23-2.6(b).

3. COMMENT: The commenter took issue with the proposed amendments at N.J.A.C. 5:23-2.6(b)4, asking, “if a room or space incidental to a religious occupancy is being used as a hospitality room, as defined in N.J.A.C. 5:15, how can it accommodate 15 persons, for 15 consecutive days or 50 days in a calendar year? It’s not a ‘hospitality room’! So is it any room or space incidental to a religious occupancy that accommodates 15 persons for shelter, etc?.” The commenter also sought clarity regarding the numbers articulated in the proposed amendment, inquiring into whether the Department meant 15 persons, 15 consecutive days or 50 days in a calendar year precisely or as a baseline, as well as the Department’s intent regarding some combination thereof (for example, 15 persons or more but for only 14 or less consecutive days or 49 or less days in a calendar year).

RESPONSE: The Department notes that the numbers cited in the above comment are applied inaccurately in the example; the Uniform Construction Code (UCC) amendments state that *if* the

religious occupancy accommodates 15 people for 15 consecutive days or 50 days in a calendar year, it is a change of use pursuant to the UCC; this aligns with the definition of hospitality rooms at N.J.A.C. 5:15, which stipulates that hospitality rooms are “a room or space incidental to a religious use wherein 14 or fewer persons are provided shelter for 14 or fewer consecutive days for no more than 49 days in a year.” This definition has been in place at N.J.A.C. 5:15 since September 17, 1990, and has not caused any confusion among religious uses operating hospitality rooms. The intent is to align the UCC with N.J.A.C. 5:15 to ensure that once the thresholds for hospitality rooms have been exceeded, the owner of the space would need to apply for, and be issued, a dual Certificate of Occupancy to allow for a Group R-1, in addition to the existing use of the space.

4. COMMENT: The commenter inquired if the Department meant religious facility, not “any” facility, in the proposed amendment stating that “Any facility that accommodates fewer stays within a calendar year shall obtain a permit under the Uniform Fire Code, N.J.A.C. 5:70.” The commenter asked if a UFC permit is only applicable when fewer than 50 stays in a calendar year occurs, or if it is also triggered by consecutive days or number of persons. The commenter disagreed with the proposed amendment stating that hospitality rooms in occupancies other than a religious occupancy shall be prohibited, noting that, by the N.J.A.C. 5:15 definition, the room or space must be incidental to the religious use or occupancy.

RESPONSE: It is the Department’s intent to allow for only religious facilities to be used as hospitality rooms. While this is made explicit in the final sentence (hospitality rooms in occupancies other than a religious occupancy shall be prohibited), to alleviate any possible confusion, a change is being made upon adoption to clarify this.

5. COMMENT: The commenter suggested that the Department consider reclassifying the proposed amendment at N.J.A.C. 5:23-2.6(b)4 as an exception to N.J.A.C. 5:23-2.6(b)2. The commenter also recommended that the Department review UCC Subchapter 6 and include the new “hospitality room” provisions where appropriate for consistency. While on the topic of administrative changes, the commenter recommended that the Department review the usage of “2½ years of age” at N.J.A.C. 5:23-6.31(a)7, 2.6(b)2, and elsewhere, as this could be construed as 21 divided by 2, or 10.5 years of age.

RESPONSE: The Department thanks the commenter for his recommendations, but respectfully disagrees. Because the inclusion of hospitality rooms is intended to clarify when a change of use has occurred, it was decided that N.J.A.C. 5:23-2.6, Change of Use, is the most appropriate place for this language. The Department regularly reviews the language of the Rehabilitation subcode, N.J.A.C. 5:23-6, to ensure it aligns with text throughout the rest of the UCC. If any changes are needed as a result of the reference to hospitality rooms, they will be proposed at a later date; currently, the Department does not see a need to revise the Rehabilitation subcode to account for hospitality rooms, which are not a change of use. In addition, the use of “2½ years of age” is acceptable format pursuant to the general style notes detailed in the Office of Administrative Law’s 2015 edition of the Rulemaking Manual.

6. COMMENT: The commenter sought clarification regarding the proposed amendments to allow plans for class 3 structures to be prepared by persons licensed or certified pursuant to their respective laws and rules, asking, “For Class 3 projects that have a lead architect or engineer (design professional), are the documents prepared by people (these licensed or certified

individuals) other than the design professional required to be reviewed by the design professional and submitted with a letter indicating they have been reviewed and found to be in conformance with the regulations for the design of the building? Can a different licensed or certified person (different business entity or contractor) perform the work based on plans prepared by another licensed or certified contractor? Or is it required that the licensed or certified person that prepared the plans needed to perform the work? I'm not aware of any licensed contractor laws and rules that addresses or has within their scope of licensure the preparation of plans. Please advise if you are aware of any. Is the Department considering these plans as schematic or sketch plans and not design plans, therefore not required to be design professional signed and sealed or even reviewed by the design professional?". The commenter supplemented these comments in a later submission, stating, "As previously expressed, I am not aware of any contractor laws addressing preparation of plans. The above noted text appears to be stating that plans may be prepared in accordance with their laws and rules. While the Department's intent appears to be that the person is only to be licensed or certified pursuant to laws and rules which then allows preparation of class 3 plans. It is recommended that the word 'their' be deleted and replaced with text referring to any laws and rules of the State of New Jersey. Also it is recommended that the final decided on text be written the same, or similar, in both sections. (Note that one states 'persons,' while the other states 'contractors.')

So for clarification, is the Department attempting to state that 'persons duly licensed or certified under any laws and regulations of this State (NJ) may prepare plans for class 3 structure work that is customarily a part of the services rendered by such licensed or certified person in the course of their employment'? Or 'plans for class 3 structure work may be prepared by persons duly licensed or certified under any laws and

regulations of this State (NJ) that is customarily a part of the services rendered by such licensed or certified person in the course of their employment’?.”

RESPONSE: For a project where there is a lead architect or design professional, the lead architect or design professional can allow the licensed tradesperson to complete the documentation for his or her specific work in accordance with N.J.A.C. 5:23-2.15(f)1xi, so long as the architect or design professional reviews the documentation. It is the Department’s opinion that the language as drafted is clear; for class 3 structures, persons licensed or certified by the State in a specific trade may submit plans relevant to that trade. The intent of this section is to allow for licensed or certified trade professionals to draft plans. This language followed all necessary approvals and checks for clarity. No further revisions are being considered at this time.

7. COMMENT: The commenter referenced previously expressed concerns on a prior rulemaking, suggesting corrections be made to the following areas: “N.J.A.C. 5:23-2.38(b) refers to N.J.A.C. 5:23-7.15 through 7.31. Equestrian facilities (7.32) are not referenced and 7.15 and 7.20 are ‘Reserved.’ Correct as needed. N.J.A.C. 5:23-2.38(b) only refers to the Barrier Free Recreation Standards and the Playground Safety Subcode (N.J.A.C. 5:23-11). There is no reference to the NJ Building Subcode, Section 1110, Recreation Facilities. The NJ Building Subcode, Section 1110, Recreation Facilities should also be referenced. Correct as needed. Conflicts still exist with the requirements of the Barrier Free Recreational Standards, the Playground Safety Subcode, and the NJ Building Subcode, Section 1110. Correct as needed. Address the ‘paper problem’.”

RESPONSE: The Department thanks the commenter for these recommendations and notes that they are outside the scope of this rulemaking and will not be addressed upon adoption. The Department regularly reviews cross references within the UCC to ensure accuracy and clarity; should these sections need to be addressed, the Department may do so in a future rulemaking.

### **Federal Standards Statement**

A Federal standards analysis is not required because the adopted amendments are 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 any Federal law, standard, or requirements.

**Full text** of the adoption follows (additions to the proposal indicated in boldface with asterisks **\*thus\***; deletion from proposal indicated in brackets with asterisks \*[thus]\*):

## SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

### 5:23-2.6 Change of use

(a) (No change.)

(b) Change of use: It shall be unlawful to change the use of any structure or portion thereof without the prior application for and issuance of a certificate of occupancy as provided below.

1.-3. (No change.)

4. If any room or space incidental to a religious occupancy is being used as a hospitality room, accommodates 15 persons for emergency shelter, for 15 consecutive days or 50 days in a calendar year, and the activities involve planned periods of sleep, the building is considered to have undergone a change of use. In such a case, it shall be necessary to

apply for and be issued a Certificate of Occupancy. This shall be a dual Certificate of Occupancy to allow Use Group R-1, in addition to the existing use of the building. Any **\*religious\*** facility that accommodates fewer stays within a calendar year shall obtain a permit under the Uniform Fire Code, N.J.A.C. 5:70. Hospitality rooms in occupancies other than a religious occupancy shall be prohibited.

#### 5:23-2.38 Departmental appeal

(a) (No change.)

(b) Any party in interest aggrieved by any decision made by a facility manager or owner or administering agency with respect to compliance with either the Barrier Free Recreation Standards (N.J.A.C. 5:23-7.15 through 7.31) or the Playground Safety Subcode (N.J.A.C. 5:23-11) shall have the right to appeal the decision to the Department.

1. (No change from proposal.)

**\*[5.]\* \*2.\*** (No change in text.)