

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Proposed Amendments: N.J.A.C. 5:23-7.19, 7.31, 11.2, and 11.4

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

Authority: N.J.S.A. 52:27D-119 and 52:27D-123.10.

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

Proposal Number: PRN 2021-098.

Submit written comments by December 3, 2021, to:

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The agency proposal follows:

Summary

The Department of Community Affairs (Department) seeks to amend N.J.A.C. 5:23-7, Barrier Free Subcode, and 11, Playground Safety Subcode, of the Uniform Construction Code (UCC) to implement requirements for the design and construction of completely inclusive playgrounds in accordance with the requirements of P.L. 2018, c. 104, Jake's Law. Jake's Law, and this rulemaking, would not be applicable to all playgrounds; rather, they create a subset of

standards for this new option in playground construction, design, and operation. In addition to the proposed amendments, any work that would require that a Uniform Construction Code permit must comply with the permit application process set forth at Subchapter 2 of the UCC.

Pursuant to Jake's Law, the Department invited and received recommendations regarding the adoption of rules for completely inclusive playgrounds from organizations, playground equipment manufacturers, playground safety consultants, and persons with disabilities with a demonstrated expertise in the design and construction of completely inclusive playgrounds or with a demonstrated expertise in the implementation of accessibility standards.

Recommendations were received from: Build Jake's Place; New Jersey Recreation and Park Association; Ben Shaffer Recreation; and Let Kids Play. Each of their recommendations is reflected in the language of the rulemaking. In addition, the Barrier Free Subcode Committee of the Uniform Construction Code Advisory Board, which is comprised of members with a demonstrated expertise in the implementation of accessibility standards, reviewed, and approved, this rulemaking. Lastly, Jake's Law authorized the Department to promulgate this rulemaking with the Department of Education; the Department of Education has reviewed and approved this rulemaking.

A section-by-section summary of the proposal follows:

1. At N.J.A.C. 5:23-7.19(b)1 and 2, proposed amendments would correct cross-references to state that accessible routes of travel shall be provided in accordance with the building subcode; these requirements were previously at Subchapter 7.

2. At N.J.A.C. 5:23-7.31(b), proposed amendments would reorganize the section to account for the addition of completely inclusive playground requirements. In addition, N.J.A.C.

5:23-7.31(b)2i(1) would correct a cross-reference to state that ramps must comply with the building subcode; ramp requirements were previously at Subchapter 7.

3. At N.J.A.C. 5:23-7.31(c), a new subsection would state that, in addition to the requirements at N.J.A.C. 5:23-7.31(b), completely inclusive playgrounds shall have elevated play equipment and elements in which at least 50 percent are accessible; the new subsection would further provide examples of play elements and require that they meet the standards required by the Americans with Disabilities Act of 1990.

4. At N.J.A.C. 5:23-11.2, proposed amendments would add the definition of “completely inclusive playground” pursuant to Jake’s Law. The section would be restructured to account for this addition.

5. At N.J.A.C. 5:23-11.4(d)1, proposed amendments would correct a typo in a cross-reference.

6. Proposed new N.J.A.C. 5:23-11.4(e) would establish the requirements for the design, construction, and operation of a completely inclusive playground, as follows:

- New N.J.A.C. 5:23-11.4(e)1 would require that parking be provided in accordance with municipal law. Further, the new paragraph would specify that street parking, including the accessible route and required curbcuts, be installed in accordance with any local municipal ordinance and that lot and deck parking would be required to be accessible pursuant to Chapter 11 of the building subcode.
- Proposed new N.J.A.C. 5:23-11.4(e)2 would require that unitary surfacing be provided in all areas of the playground. Unitary surfacing is defined in the Consumer Product Safety Commission (CSPC) Playground Safety Handbook as

“manufactured material used for protective surfacing in the use zone that may be rubber tiles, mats, or a combination of energy absorbing materials held in place by a binder that may be poured in place at the playground site and cures to form a unitary shock absorbing surface,” and is already adopted by the Department at N.J.A.C. 5:23-11. This new paragraph would require that, prior to selecting a site for construction of a completely inclusive playground, an applicant shall ensure that local, county, and State laws allow for the use of unitary surfacing in the desired area.

- Proposed new N.J.A.C. 5:23-11.4(e)3 would require that, where restroom facilities are provided, at least one facility must be a family or assisted-use toilet room, installed in accordance with Section 1109.2.1.1 of the building subcode.
- Proposed new N.J.A.C. 5:23-11.4(e)4 would require that shading be provided over at least 20 percent of the square footage of the unitary surface and equipment of the playground. The new paragraph would further specify that priority may be given to seating areas or tables, where provided, and that shade may be provided by natural or man-made means.
- Proposed new N.J.A.C. 5:23-11.4(e)5 would require that fencing be provided around the playground. Additional language would further specify that fencing materials may include traditional fencing materials or natural barriers.
- Proposed new N.J.A.C. 5:23-11.4(e)6 would require that play components that address physical, sensory, cognitive, social, emotional, imaginative, and communication means shall be provided. The new paragraph would also clarify

that the applicability of these features is to be determined by the owner of the facility pursuant to the manufacturer's instructions.

- Proposed new N.J.A.C. 5:23-11.4(e)7 would require that quiet play areas be provided, as identified by the playground manager. Since it is anticipated that quiet play areas will look different from playground to playground, the Department determined that it would be most appropriate for the person charged with managing the playground to determine the quiet play area for that playground.

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

It is anticipated that the proposed amendments will have a positive social impact. The creation of an option for completely inclusive playgrounds will expand the play options available to children with disabilities throughout the State. It is anticipated that the proposed amendments allow for flexibility in design that will ensure that a wide array of needs are addressed in the design, construction, and operation of these playgrounds.

Economic Impact

The proposed amendments incorporating completely inclusive playground design into the UCC are not expected to have a direct economic impact. The design of these facilities is not a requirement; rather, a playground designer may choose to build a completely inclusive playground. In addition, Jake's Law provided that Green Acres funds from the Department of Environmental Protection may be applicable to completely inclusive playgrounds.

Federal Standards Statement

A Federal standards analysis is not required because the 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 laws, standards, or requirements.

Jobs Impact

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

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The proposed amendments, which implement requirements for completely inclusive playgrounds, do impose new compliance requirements on playground designers and owners that could classify as “small businesses,” as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, because the design and construction of completely inclusive playgrounds is optional and would not entail professional services or recordkeeping procedures that vary from traditional playground construction, these new compliance requirements are not expected to pose an undue burden on small businesses; thus, no regulatory flexibility analysis is required.

Housing Affordability Impact Analysis

It is not expected that the proposed amendments will have any impact on the affordability of housing or the average costs associated with housing because the proposed amendments concern the establishment of completely inclusive playgrounds.

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 establishment of completely inclusive playgrounds.

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.

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

SUBCHAPTER 7. BARRIER FREE SUBCODE

5:23-7.19 Recreation: route of travel

(a) (No change.)

(b) An accessible route of travel shall meet the following criteria:

1. An accessible route of travel that connects an accessible site access point and support facilities, accessible recreation facilities, and accessible recreation equipment shall meet all of the criteria for an accessible route in the technical standard adopted [as part of this subchapter] **within Chapter 11 of the building subcode (N.J.A.C. 5:23-3.14)**, except that the following are also acceptable surfacing materials: flat surfaced pavers on concrete, flat surfaced pavers on sand, and wood decking. Crushed stone laid over a compacted subgrade and bound with sufficient cement to provide a non-shifting, firm surface shall also be acceptable.

2. A challenge level I accessible route may connect additional site access points, if provided, and support facilities, recreation equipment, and recreation facilities. A challenge level I accessible route shall meet the criteria for an accessible route in the technical standard adopted [as part of this subchapter] **within Chapter 11 of the building subcode (N.J.A.C. 5:23-3.14)**, except as follows:

i.–v. (No change.)

(c)–(e) (No change.)

5:23-7.31 Recreation: equipment

(a) Five percent of all picnic tables, benches, fireplaces, and grills provided, rounded to the next higher whole number, but not less than one, shall be on an accessible route of travel.

1. (No change.)

(b) Within each play area on a site[, at]:

1. At least 25 percent of the single function play equipment shall be of a type identified by its manufacturer as accessible to and usable by both disabled and non-disabled persons[.];
and

[(c)] **2. At least 25 percent of the play activities of all multi-functional play equipment within each play area on a site shall be of a type identified by its manufacturer as accessible to and usable by both disabled and non-disabled persons.**

[1.] **i.** Access onto the multi-functional play equipment may include, but is not limited to, the following:

[i.] **(1)** A ramp that complies with the technical standard adopted [as part of this subchapter] **within Chapter 11 of the building subcode (N.J.A.C.**

5:23-3.14) and that provides a landing at the top and at the bottom that has a minimum width of five feet by five feet;

Recodify existing ii. and iii. as **(2) and (3)** (No change in text.)

[2.] **ii.** (No change in text.)

(c) In addition to (b) above, completely inclusive playgrounds shall have elevated play equipment/elements in which at least 50 percent is accessible.

1. Play elements include single-function play equipment, multi-function equipment, changes in topographical elevations that function as elevated play elements, and elements that otherwise meet the standards required by the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.

(d)–(e) (No change.)

SUBCHAPTER 11. PLAYGROUND SAFETY SUBCODE

5:23-11.2 Definitions

[For purposes of] **The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.**

“Completely inclusive playground” shall mean a playground designated for public use for children two to five years of age or five to 12 years of age, with an accessible playground surface, a playground surface inspection, and maintenance schedule with the standards detailed in the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and designed in accordance with the rules adopted pursuant to subsection b. of section 2 of P.L. 1999, c. 50 (N.J.S.A. 52:27D-123.10).

["playground"] **“Playground”** shall mean an improved area designed, equipped, and set aside for play of six or more children, which is not intended for use as an athletic playing field or athletic court, and shall include any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.

5:23-11.4 Compliance schedule

(a)–(c) (No change.)

(d) All construction or alteration of playgrounds, playground equipment and surfacing that are subject to the Playground Safety Subcode shall comply with the applicable provisions of the Barrier-Free Subcode (N.J.A.C. 5:23-7).

1. In accordance with N.J.A.C. 5:23-[7.18(d)]**7.19(d)** and ICC/ANSI A117.1, Sections 302 and 303, surfaces of all routes and spaces required to be accessible shall be stable, firm, and slip-resistant. Sand and gravel shall therefore not be used as surfacing materials when new equipment is being installed, or a new safety surface is being put in place, and the barrier-free subcode is [therefore] applicable.

(e) In addition to (c) and (d) above, completely inclusive playgrounds shall include the following:

1. Parking shall be provided in accordance with local municipal law.

i. Street parking installation shall be in conformance with the local municipal ordinance, including the accessible route, which shall include the installation of a curb cut.

ii. Lot and deck parking shall be accessible pursuant to Chapter 11 of the building subcode;

2. Unitary surfacing shall be provided in all areas of the playground.

- i. Prior to selecting a site for construction of a completely inclusive playground, the applicant shall ensure that local, county, and State laws allow for the use of unitary surfacing in the desired area;**

3. Where restroom facilities are provided, at least one facility shall be a family or assisted-use toilet room installed in accordance with Section 1109.2.1.1 of the building subcode;

4. Shading shall be provided. A minimum of 20 percent of the square footage of unitary surface and equipment of the playground shall be shaded. Priority may be given to areas that have seating or tables.

- i. Shading may be provided by natural or man-made means;**

5. Fencing shall be provided around the playground.

- i. Fencing material may include, but is not limited to, traditional fencing materials or natural barriers, such as hedges;**

6. Play components that address the physical, sensory, cognitive, social, emotional, imaginative, and communication needs shall be provided. The applicability of these features shall be determined by the owner of the facility pursuant to the manufacturer's instructions; and

7. Quiet play areas shall be provided.

- i. The playground manager shall identify the quiet play areas.**