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Ongoing Construction Projects and COVID-19

The Department of Community Affairs is aware of the construction industry's concerns about the interruption of plan review and inspection responsibilities, State or local, due to the Coronavirus (COVID-19).

Pursuant to Executive Orders 107 and 108, at this time, local enforcing agencies (LEAs) cannot restrict code officials from performing their obligations under the Uniform Construction Code (UCC), N.J.A.C. 5:23. In response to this, the Department of Community Affairs has temporarily relaxed and modified certain provisions concerning Minor work (N.J.A.C. 5:23-2.17A), Inspections (N.J.A.C. 5:23-2.18), and Certificate requirements (N.J.A.C. 5:23-2.23) in order to ensure the continuity of construction without a detriment to the public welfare during the COVID-19 pandemic. The below guidance explains these rule modifications.

Guidance for construction offices:

The Department does understand that LEAs should be flexible in order to preserve the health of inspectors, contractors, and the general public. LEAs should consider work from home options whenever possible, e.g., plan review and administrative actions, and use electronic communication to the greatest extent possible. Construction offices should prioritize inspections necessary for the health and welfare of the public. Should in-person inspections not be possible, LEAs are encouraged to employ creative solutions, such as video conferencing via platforms like FaceTime or Skype, whenever feasible, to conduct inspections. In addition, the Department advises the following:

1. All required inspections for new construction and any work on the exterior or outside of any occupied building should be performed as usual.
2. Rough inspections for new additions should be performed, provided no entry to the occupied home or building is required or that appropriate social distancing is in effect.
3. Contractors may report construction activity, such as rough inspections, in existing occupied buildings with photos or other documentation for the time being.
4. Items listed as Minor Work at N.J.A.C. 5:23-2.17A require only a final inspection. This includes inspections of replacement items such as a residential heater, air conditioner and/or water heaters. These inspections may be deferred to a later date. The contractor should report construction activity as indicated in item 3 above.

Guidance for construction offices that had to close:

Notwithstanding the above, this section addresses the closure of construction offices in the event that there are future Orders regarding such closure, or if an office is closed due to unforeseen circumstances such as the quarantine of all staff members as a result of the spread of COVID-19.

Currently, LEAs should consider work from home options whenever possible, e.g., plan review and administrative actions. However, should the LEA need to close due to unforeseen circumstances, such as the quarantine of all staff members as a result of the spread of COVID-19 and, consequently, inspections must be deferred, the Department advises the following:

Notwithstanding emergency work in accordance with N.J.A.C. 5:23-2.14(b)3, if a permit was issued prior to the closure of a construction office and inspections have been deferred, then construction officials shall perform a Certificate of Continued Occupancy (CCO) inspection upon the office reopening. A CCO inspection is a reasonable solution for ensuring that construction work is properly documented and that future projects within the building are not cited for violations resulting from work performed without permits or inspections. In this unprecedented circumstance, the documentation for a CCO inspection shall, at a minimum, include the following: a report describing the work that was completed within the time that no inspections were available; the design professional or firm associated with the project shall oversee, approve, and document the portions of the project where no inspections were performed; licensed/registered tradesmen shall document the process of their work in accordance with the inspection procedures of the UCC; and before, during, and after pictures and/or video shall be included in the documentation.

Construction officials should be aware that CCO inspections are limited to those portions of the building that are visible at the time of inspection. For items that are no longer visible, there must be probable cause to warrant uncovering the completed work to allow for inspections even if the documentation noted above does not demonstrate compliance. Destructive inspections should be performed only if there is reason to believe that a life-safety violation exists.

The above portion of the guidance is based on the notion that the referenced building has been issued a Certificate of Occupancy (CO) previously, very much like the guidance within Bulletin 06-1, Work Done without Permits, and the procedures outlined within the Annual Permit issuance at N.J.A.C. 5:23-2.14(e). Again, this will be based on the organized and cataloged documentation provided by the licensed design professional and/or the licensed/registered tradesmen.

In the event a building has never been issued a CO, the same procedures shall be followed. However, instead of the eventual CCO issued by the LEA when reopened, it may be necessary to reach out to the Department in order to obtain a Temporary Certificate of Occupancy (TCO). Once the building is initially occupied under the TCO, a CO would eventually be issued by the LEA per the applicable construction activity at N.J.A.C. 5:23-2.23.

We cannot stress enough: documentation of all types is key in both situations, CCO or TCO. The more documentation provided, the better, and cataloging in the order of progress per N.J.A.C. 5:23-2.18 would be necessary.

Lastly, in the event a construction office had to close, plan review for any new projects may be placed on hold unless the project is critical to combating COVID-19.

If you have questions regarding the above, please contact the Division of Codes and Standards at (609) 984-7672 or (609) 984-7609.