

RULE ADOPTION

COMMUNITY AFFAIRS DIVISION OF CODES AND STANDARDS DIVISION OF FIRE SAFETY

Adopted Amendments: N.J.A.C. 5:23-2.14, 3.2 and 3.14; and 5:70-2.7

Uniform Construction Code; Uniform Fire Code

Tents, Tensioned Membrane Structures, Greenhouses and Outdoor Combustible Mazes

Proposed: September 6, 2005 at 37 N.J.R. 3108(a).

Adopted: March 21, 2006 by Susan Bass Levin, Commissioner, Department of Community Affairs.

Filed: March 30, 2006 as R.2006 d.157, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:27D-124 and 198.

Effective Date: May 1, 2006.

Expiration Dates: January 15, 2008, N.J.A.C. 5:23;
June 14, 2010, N.J.A.C. 5:70.

Summary of Public Comments and Agency Responses:

Comments were received from Secretary of Agriculture Charles M. Kuperus and from Peter Furey, Executive Director of the New Jersey Farm Bureau.

COMMENT: Some of the proposed regulatory restrictions will have an adverse effect on the agriculture industry, both in production agriculture and in the growing area of agri-tourism, by exacerbating the problem of high operating costs.

RESPONSE: The Department does not anticipate that these amendments will have any impact on production agriculture. As to agri-tourism, the adopted amendments do not change whether a permit is required for tents. They do shift enforcement responsibility for most tents from the local construction official to the local fire official. This actually results in more efficient enforcement of the requirements since the fire official is better able to deal with weekend events than the construction official. Mazes had not been addressed explicitly in the rules, and this has resulted in enforcement in some municipalities, but not in others. The adopted rules exempt mazes created solely of living, rooted plants (typically, corn mazes). Having a specific exemption for these mazes should aid farmers. For those creating mazes of other materials, the rules are now specific as to whether a permit is required.

COMMENT: The proposal should be amended to allow the use of polyethylene barricade tape no thicker than three mils in outdoor mazes for purpose of flow control or establishing outdoor perimeters. Such use would be consistent with the intention of the rule, since the tape is easy to breach.

RESPONSE: The rules do not preclude the use of three-mil barricade tape. No amendment is needed to allow its use.

COMMENT: When a farmer has a live corn maze, some stalks are inevitably trampled or damaged, and this destroys the flow and integrity of the maze. Cornstalks bundled with polyethylene barricade tape no thicker than three mils are then used to replace the trampled or damaged live stalks. The proposal should be amended to allow this practice.

RESPONSE: Proposed N.J.A.C. 5:70-2.7(a)3xvii has been amended, upon adoption, to allow replacement or repair using the same plant materials that create the maze.

COMMENT: The proposal should be amended to include an exemption for mazes with bales not more than 24 inches high that a person rides through on a pedal-powered vehicle and an exemption for mazes with bales not more than 42 inches high that a person walks through. With such limits, adults and older children would be tall enough to see over the bales, thereby reducing or eliminating any disorientation or reduced vision.

RESPONSE: The Department agrees that the mazes described above do not constitute a hazard. And it was not the Department's intent to regulate these. Therefore, proposed N.J.A.C. 5:70-2.7(a)3xvii has been amended, upon adoption, to state that mazes created of bales not more than 42 inches in height are exempt from the requirement for a permit.

COMMENT: Community farmers' markets and other open air markets that are open for less than 24 hours should be exempt from construction code and fire code permits.

RESPONSE: There is no basis for exempting tents, electrical equipment and other items that currently require permits that might be used at open air markets. And as stated above, these adopted amendments do not change the permitting requirements. They simply shift the permitting requirements for tents that do not have any associated structural considerations from the local construction official to the local fire official which should result in more efficient enforcement.

COMMENT: Exemption from permits should also be given for tents that are greater than 900 square feet in area but have only one or two sides enclosed, since there is no impediment to public egress from the tent.

RESPONSE: As stated above, there is no basis for exempting these tents from the requirement for a permit. The public safety concerns remain and there are items that must be checked for compliance with the Code requirements, for example, the fire retardant treatment of the tent itself.

COMMENT: Would it be the obligation of the farmer or of the electrical equipment rental business to secure the appropriate permits? This should be made clear. If it is the obligation of the rental business, then the farmer should not be required to obtain a redundant permit. Also, permits should not be required for purchased lights that meet safety requirements that the Department of Agriculture would be happy to cooperate in developing. It should also be made clear whether or not an electrical permit is required for low-voltage public address systems.

RESPONSE: Only one permit is required. And whether the farmer or the electrical equipment rental business secures the permit is a matter to be decided between them, typically as part of the rental contract. It does not matter, from the standpoint of the local enforcement agency, whether it is the owner (the farmer) or his agent (the electrical equipment rental business) completing the permit application. As to purchased lights, the Department would be willing to meet with representatives of the Department of Agriculture to explore this further. It is unclear, from the comment alone, what these might be. Finally, no permit is required for public address systems that are plug-in type (plug and cord connected.) This is already covered under the Uniform Construction Code.

COMMENT: Farmers who would ordinarily not use electrical equipment in their tents may use it for special occasions. In such cases, delay in obtaining a permit can make it impossible to hold a planned event. There should be an exemption from permit requirements if the equipment is to be

used for less than 24 hours and has a ground fault interrupter to protect against any surges or water damage.

RESPONSE: The requirements of the Uniform Construction Code applicable to electrical wiring are intended to protect the public from electrical hazards. The hazards associated with improper wiring are the same whether the event is less than 24 hours in duration or not. If it is a planned event, then the farmer must plan to obtain an electrical permit.

COMMENT: The Department of Agriculture would like the Department of Community Affairs to evaluate code requirements for livestock turn-out sheds, garden-type utility sheds and certain structures of no more that 900 square feet used for sheltering livestock or storage of hay or straw.

RESPONSE: The Department of Community Affairs will certainly review with the Department of Agriculture the requirements applicable to these structures. However, they are beyond the scope of the present proposal.

COMMENT: The New Jersey Farm Bureau respects the need for fire safety. It also wants agency rules to adhere to the principles of the Right-to-Farm Act, which offers appropriate guidelines for farm operators and avoids regulations that are unnecessary or unwieldy. It relies on the judgment of the Department of Agriculture and concurs in their recommendations.

RESPONSE: The Department appreciates the comments of both the Farm Bureau and the Department of Agriculture.

Summary of Agency-Initiated Change:

At N.J.A.C. 5:70-2.7(a)3, the Department noticed a codification error in the proposed amendments which is being corrected upon adoption.

Federal Standards Statement

No Federal standards analysis is required because these 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 a State statute that incorporates or refers to Federal law, standards or requirements.

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

5:23-2.14 Construction permits -- when required

(a) It shall be unlawful to construct, enlarge, repair, renovate, alter, reconstruct or demolish a structure, or change the use of a building or structure, or portion thereof, or to install or alter any equipment for which provision is made or the installation of which is regulated by this chapter, or to undertake a project involving lead abatement in accordance with N.J.A.C. 5:17, without first filing an application with the construction official, or the appropriate subcode official where the construction involves only one subcode, in writing and obtaining the required permit therefor.

(b) The following are exceptions from (a) above:

1.-3. (No change.)

4. Exceptions to permit requirements for temporary structures, tents, tensioned membrane structures, canopies, and greenhouses are as follows:

i. Temporary structures: A construction permit is not required for the erection, operation or maintenance of any temporary structures (excluding tents, tensioned membrane structures, canopies, and greenhouses) covering an area less than 120 square feet, including all connecting areas or spaces with a common means of egress or entrance and which remain in place for less than 180 days;

ii. Tents, tensioned membrane structures, and canopies: A construction permit is not required for tents, tensioned membrane structures, and canopies that meet all of the criteria in (b)4ii(1) through (5) below. Tents, tensioned membrane structures, and canopies meeting the following criteria shall be subject to the permitting requirements of the Uniform Fire Code (N.J.A.C. 5:70-2.7).

(1) The tent, tensioned membrane structure, or canopy is less than 140 feet in any dimension and less than 16,800 square feet in area whether it is one unit or is composed of multiple units;

(2) The tent, tensioned membrane structure, or canopy remains in place or will remain in place for fewer than 180 days;

(3) The tent, tensioned membrane structure, or canopy is used or occupied only between April 1 and November 30;

(4) The tent, tensioned membrane structure, or canopy does not have a permanent anchoring system or foundation; and

(5) The tent, tensioned membrane structure, or canopy does not contain platforms or bleachers greater than 11 feet in height.

iii. A temporary greenhouse, also called a "hoophouse" or "polyhouse," meeting the criteria stated in N.J.A.C. 5:23-3.2(d), shall not require a permit.

iv. Regardless of whether the tent, tensioned membrane structure, canopy, or greenhouse requires a permit, a permit shall be required for any electrical equipment, electrical wiring or mechanical equipment that would otherwise require a permit.

5.-9. (No change.)

10. A construction permit is not required for an outdoor maze, unless it is six feet or greater in height or contains any electrical equipment. Outdoor mazes that do not require a permit are subject to the permitting requirements of the Uniform Fire Code (N.J.A.C. 5:70-2.7).

i. For the purposes of applying this requirement, an outdoor maze is an attraction that lacks a roof and is designed to disorient patrons, reduce vision, present barriers, or otherwise impede the flow of traffic and does not consist solely of living rooted plants such as corn stalks or trees, but includes mazes created from plants that have been cut and attached to an object to support them.

(c)-(g) (No change.)

5:23-3.2 Matters covered; exceptions

(a)-(c) (No change.)

(d) Rules concerning commercial farm buildings are as follows:

1.-2. (No change.)

3. Pre-engineered grain bins, manure handling equipment and impoundments used on a farm for the storage of agricultural commodities or by-products which are produced by or used on the farm shall not require a construction permit. However, all on-site construction work such as foundations and plumbing and electrical connections shall be subject to all requirements and inspections of any applicable subcode(s).

4. A temporary greenhouse, also called a "hoophouse" or "polyhouse," used exclusively for the production and storage of live plants, shall be exempt from the permit requirements of the Uniform Construction Code if it meets all the criteria of (d)3i through iv below:

i. There is no permanent anchoring system or foundation;

- ii. There is no storage, temporary or otherwise, of solvents, fertilizers, gases, or other chemical or flammable materials;
- iii. The structure is no wider than 31 feet and there is an unobstructed path of no greater length than 150 feet from any point to a door or fully accessible wall area, the covering of which is a material no greater than six mils (152.4 micrometers) in thickness that yields approximately four pounds of maximum impact resistance to provide egress through the wall; and
- iv. The covering of the structure is of a material that conforms to NFPA 701.
- v. If a temporary greenhouse contains any device subject to the electrical subcode or any mechanical equipment subject to the mechanical subcode, a permit shall be required for the device, system or fixture only. If the temporary greenhouse is connected to a potable water system, a permit shall be required for the backflow prevention devices only.

Recodify existing 4. and 5. as 5. and 6. (No change in text.)

7. Buildings containing any of the following uses are not included in the definition of a commercial farm building:

i.-v. (No change.)

iv. Buildings that contain any use not included in the definition of commercial farm building, except incidental offices as provided in (d) 10vii below.

Recodify existing 7.-10. as 8.-11. (No change in text.)

5:23-3.14 Building subcode

(a) (No change.)

(b) The following chapters of the building subcode are modified as follows:

1.-20. (No change.)

21. Chapter 31, Special Construction, shall be amended as follows:

i. (No change.)

ii. Section 3103.1.1 shall be deleted in its entirety and the following shall be inserted:

"Temporary structures, tents, tensioned membrane structures, and canopies meeting the criteria in N.J.A.C. 5:23-2.14 shall not require a permit. Greenhouses meeting the criteria in N.J.A.C. 5:23-3.2(d) shall not require a permit."

iii. (No change.)

22.-26. (No change.)

5:70-2.7 Permits required

(a) Permits shall be required and obtained from the local enforcement agency for the activities specified in this section, except where they are an integral part of a process or activity by reason of which the use is required to be registered and regulated as a life hazard use. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1.-2. (No change.)

3. Type 1 permit:

i.-xiv. (No change.)

[xvi.] *xv.* The erection, operation, or maintenance of any tent, tensioned membrane structure, or canopy, excluding those used for recreational camping purposes, that meets the criteria in (a)3xvi(1) or (2) below shall require a Type 1 permit. Tents, tensioned membrane structures, or canopies greater than 16,800 square feet in area and greater than 140 feet in any dimension, whether one unit or composed of multiple units; remaining in place for more than 180 days; used or occu-

ped between December 1 and March 31; having a permanent anchoring system or foundation; or containing platforms or bleachers greater than 11 feet in height shall be subject to the permitting requirements of the Uniform Construction Code (N.J.A.C. 5:23-2.14).

(1) The tent, tensioned membrane structure, or canopy is greater than 900 square feet and more than 30 feet in any dimension whether it is one unit or composed of multiple units, but 16,800 square feet or less in area and 140 feet or less in any dimension, whether it is one unit or composed of multiple units.

(2) The tent, tensioned membrane structure, or canopy contains platforms or bleachers 11 feet or less in height;

[xvii.] ***xvi.*** The erection, operation, or maintenance of any outdoor combustible maze shall require a Type 1 permit if the outdoor combustible maze is less than six feet in height and does not contain electrical equipment. Outdoor combustible mazes that are six feet or greater in height or contain electrical equipment shall be subject to the permitting requirements of N.J.A.C. 5:23-2.14.

(1) For the purposes of applying this requirement, an outdoor combustible maze is an attraction that lacks a roof and is designed to disorient patrons, reduce vision, present barriers, or otherwise impede the flow of traffic and does not consist solely of living rooted plants such as corn stalks or trees, but includes mazes created from plants that have been cut and attached to an object to support them.

***(A) Mazes consisting solely of living, rooted plants, such as corn stalks or trees, may be repaired using cut, replacement plants that are otherwise the same as those of which the maze is created without the need for a permit.**

(B) No permit shall be required for mazes up to 42 inches in height created of bales of hay or straw.*