

**STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY) (MARCH 9, 2020)
COVID-19 STATE OF EMERGENCY**

Temporary Rule Relaxation of certain provisions of Title 5, New Jersey Administrative Code adopted by Lieutenant Governor Sheila Y. Oliver, Commissioner of the Department of Community Affairs.

Date: March 25, 2020

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy) (“EO 103”)

Effective Date: March 25, 2020

Expiration Date: Upon the termination of Executive Order No. 103 (Murphy) (March 9, 2020).

This is an emergency adoption of a temporary rule relaxation of the regulatory 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). Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Department of Community Affairs is relaxing its rules as follows:

Minor work, N.J.A.C. 5:23-2.17A(d), generally requires inspections for minor work, including inspections of replaced residential heaters, air conditioners, and/or water heaters, to occur within three business days of the request for inspection. However, in light of the COVID-19 emergency, Local Enforcement Agencies (LEA) should be flexible in order to preserve the health of inspectors, contractors, and the general public. Additionally, some LEAs may need to close. As such, construction officials may not be able to perform an inspection in the required three-day period. As the time frame for these inspections is not required by statute, the Department of Community Affairs has relaxed the time frame for such inspections to occur within 30 days from the termination of Executive Order No. 103 (Murphy) (March 9, 2020).

Inspections, N.J.A.C. 5:23-2.18, generally requires construction officials to perform a preliminary inspection, inspections during the progress of work, and a final inspection. However, in light of the COVID-19 emergency, LEAs may need to close and, therefore, would be unable to perform inspections. 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 should oversee, approve, and document the portions of the project where no inspections were performed; licensed/registered tradesmen should document the process of their work in accordance with the inspection procedures of the UCC; and before, during, and after pictures and/or videos shall be included in the documentation. In the event the 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. Lastly, N.J.A.C. 5:23-2.18(c)2 requires inspections to occur within three business days of receiving a request. However, in light of the COVID-19 emergency, LEAs should be flexible in order to preserve the health of inspectors, contractors, and the general public. Additionally, some LEAs may need to close. As such, construction officials may not be able to perform an inspection in the required three-day period. As the time frame for these inspections is not required by statute, the Department of Community Affairs has relaxed the time frame for such inspections to occur within 90 days from the termination of Executive Order No. 103 (Murphy) (March 9, 2020).

Certificate requirements, N.J.A.C. 5:23-2.23(e), provides that CCOs shall be issued upon request of the owner of a building or structure. However, in light of the COVID-19 emergency, LEAs may need to close and, therefore, would be unable to perform inspections, including inspections during the progress of work as required by N.J.A.C. 5:23-2.23(b). The Department has concluded that a CCO inspection is a reasonable solution for ensuring that construction work that is performed while a LEA is closed is properly documented and that future projects within a building are not cited for violations resulting from work performed without permits or inspections. Accordingly, it may be necessary for a construction official to perform a CCO inspection upon a LEA reopening even if an owner has not requested a CCO.

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

§ 5:23-2.17A Minor work

(a) to (c) No change

(d) Inspection of minor work:

1. Inspections shall be required for minor work and the enforcing agency shall inspect any such work within [three business days of the request for inspection] **30 days from the termination of Executive Order No. 103 (Murphy) (March 9, 2020)**;

i. No change

2. No change

§ 5:23-2.18 Inspections

(a) to (b) No change

(c) Notice for inspection

1. No change

2. Inspections shall be performed within [three business days of the time for which it was requested] 90 days from the termination of Executive Order No. 103 (Murphy) (March 9, 2020). The work shall not proceed in a manner which will preclude the inspection until it has been made.

(d) to (h) No change

(i) During the effective period of Executive Order No. 103 (Murphy) (March 9, 2020), the following provisions shall apply in lieu of subsections (b) and (d). 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 local enforcing agency (LEA) and inspections have been deferred, then construction officials shall perform a Certificate of Continued Occupancy (CCO) inspection upon the office reopening. 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 videos shall be included in the documentation.

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.

In the event the building has never been issued a Certificate of Occupancy (CO), such as situations involving new construction, existing buildings being reconstructed, and extensions of and/or changes to existing structures, the same procedures shall be followed. However, instead of the CCO issued by the LEA when reopened, a request shall be made to the Department to obtain a Temporary Certificate of Occupancy (TCO). Once the building is initially occupied under the TCO, a CO shall later be issued by the LEA per the applicable construction activity at N.J.A.C. 5:23-2.23.

In the event a construction office needed to close, plan review for any new projects shall be placed on hold unless the project is critical to combating COVID-19, which shall be reviewed by the Department as required by N.J.A.C. 5:23-3.11.

§ 5:23-2.23 Certificate requirements

(a) to (d) No change

(e) Existing buildings: Upon request of the owner of an existing building or structure, **or if during the effective period of Executive Order No. 103 (Murphy) (March 9, 2020) a local enforcing agency determines that a certificate of continued occupancy inspection is necessary to ensure 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,** the construction official, with the approval of the subcode officials, shall issue a certificate of continued occupancy provided that there are not violations of law or orders of the construction official pending and it is established after inspection and investigation of available municipal records that the alleged use of the building or structure has lawfully existed. The certificate of continued occupancy shall evidence only that a general inspection of the visible parts of the building has been made, and that no violations of N.J.A.C. 5:23-2.14 have been determined to have occurred and no unsafe conditions violative of N.J.A.C. 5:23-2.32(a) have been found. Nothing in this subsection shall prevent the continued lawful use and occupancy of any such lawfully existing building or structure.

(f) to (q) No change

I find that relaxation of the above noted rules is necessary because enforcement of the existing rules would be detrimental to the public welfare during this emergency.

Date March 25, 2020

Lt. Gov. Sheila Y. Oliver
Commissioner, Department of Community Affairs