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Restaurants and Similar Uses – Guidance for the Utilization of Outdoor Space During the Winter Months

On June 17, 2020, in an effort to assist restaurants and similar assembly spaces adapt to the ongoing COVID-19 pandemic, the Department of Community Affairs, Division of Codes and Standards offered guidance for reopening and using outdoor spaces by relying mostly on tents, tensioned membrane structures, and canopies (collectively referred to as “tents”). As noted in that guidance, under the Uniform Construction Code (UCC), establishments may erect certain tents without applying for a UCC permit. However, under N.J.A.C. 5:23-2.14(b)4, due to winter weather conditions, a UCC permit from the local construction office is required to maintain tents in use past November 30th. Under N.J.S.A. 52:27D-126b, the local enforcing agency may, by ordinance, waive fees for specific projects within a municipality. In the interest of good business, municipalities are encouraged to waive permit fees for tents to remain in use past November 30th provided that the tents meet the snow bearing requirements or meet the guidance set forth herein. In addition to the above, a UCC permit is required for any electrical equipment, electrical wiring, or mechanical equipment that would otherwise require a permit (examples of such items would include HVAC systems, hard-piped fuel sources, or electrical installations).

It should be noted that most of the Uniform Fire Code (UFC) tents already erected will not meet the structural provisions of Chapter 31 of the building subcode of the UCC, adopted at N.J.A.C. 5:23-3.14, especially in relation to the winter conditions and snow loads. The local construction office may issue a variation to allow the tent to remain under the conditions set forth in UCC N.J.A.C. 5:23-2.9. Construction Officials are strongly encouraged to work with businesses to determine an appropriate variation, which can include, but is not limited to, deviations from the snow load minimum requirement, anchoring mechanism, and/or tent membrane material. In granting a variation, municipal code officials may take into account numerous factors including, but not limited to, geographic location, anticipated precipitation, weather patterns, certifications from New Jersey design professionals, manufacturers and/or experts, and tent location. When a variation is granted, a snow plan must be filed with construction official that would take effect in the event of a forecasted weather event that would exceed the certified conditions of the variation. The snow plans could include, but are not limited to, heating the tent to prevent the accumulation of snow, having the tent taken down in its entirety during periods of inclement weather, removing the top of the tent to prevent snow accumulation, or for smaller tents, utilizing maintenance personnel to remove accumulation.

An establishment must file the UCC permit application and request for a variation, if applicable, by November 30, 2020. In order to provide sufficient time for the processing of permit and variation applications, municipalities may grant establishments a two-week extension from the November 30th deadline to remove the tent, provided that the establishment has filed with the permit application a snow plan that will be put into effect in the event of a forecasted weather event occurring in the time period of the extension.

In addition to the UCC permit, “operational items” such as portable cooking equipment used around and/or under the tent should be maintained in accordance with the Uniform Fire Code (UFC) and addressed by the local fire official. This would apply to the operation/usage of portable propane heaters and similar items.

EO 194 clarified that dining domes, including bubbles, igloos, huts, etc., are permitted for outdoor dining, subject to applicable restrictions. These structures, including pop-up covers, may be erected for use without a UCC permit when limited to less than 120 square feet in area. The dome should be able to be deconstructed on a daily basis, if needed, and should be secured, but not anchored, so that it can be readily lifted for emergency evacuation. Domes that are 120 square feet or greater in area and used during December 1 to March 31 would be subject to the UCC permit and variation provisions as noted above for tents. In either case, if temporary heating is provided (e.g. portable and/or cord and plug), the local fire official would oversee the heat source clearances.

Finally, as noted in the Department’s previous guidance, if barriers are erected around the newly created outdoor dining areas, they should provide for egress openings similar to those provided for in the



Rehabilitation Subcode (N.J.A.C. 5:23-6) for assembly uses. In addition, the existing plumbing facilities should be maintained within the building for use by patrons; the restaurant or similar assembly use should establish proper protocol for maintaining social distancing for the usage of such facilities.

In addition to the above sections of the UCC, the International Code Council's "Considerations for Converting Outdoor Spaces into Temporary Seating Spaces" provides complementary guidance and should be utilized. This guide notes the applicable sections of the International Building and Fire Codes that would apply as adopted by the UCC. It can be accessed at:

https://www.iccsafe.org/wp-content/uploads/20-19250_GR_Outdoor_Seating_Code_RPT_FINAL_HIRES.pdf.

Note: Previous guidance for Outdoor Dining and UCC/UFC permit issuance can be found at <https://www.nj.gov/dca/divisions/codes/alerts/covid19.html>.

If you have questions regarding the above, please contact the Code Assistance Unit at (609) 984-7609.