



**Division of Local
Government Services**

Administration and Enforcement of the Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

A Division of the New York Department of State

Kathy Hochul, Governor

Robert J. Rodriguez, Secretary of State

NEW YORK STATE DEPARTMENT OF STATE
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
<http://www.dos.ny.gov>

DIVISION OF BUILDING STANDARDS AND CODES
(518) 474-4073

DIVISION OF LOCAL GOVERNMENT SERVICES
(518) 473-3355

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BACKGROUND

In 1981, the New York State Legislature enacted legislation directing the development and implementation of an integrated, State-wide building and fire code. Prior to the adoption of this legislation, the decision as to whether to adopt and enforce a building and/or fire prevention code was left to the discretion of local governments in New York State. Many municipalities, primarily in the more developed and densely populated areas of the State, had adopted building and/or fire prevention codes. However, there were also many communities, mostly rural in nature, where no building or fire prevention code was in effect.

In light of the perils posed by fire and inadequate building construction, the State Legislature adopted a new Article 18 of the Executive Law to provide for an integrated and comprehensive building and fire prevention code. Article 18, consisting of sections 370 through 383 of the Executive Law, sets forth the process by which the code is to be developed, maintained, administered, and enforced for the protection of all New Yorkers. Both State government and local governments are participants in this process. The code, called the **New York State Uniform Fire Prevention and Building Code** (“Uniform Code”), took effect January 1, 1984 and prescribed minimum standards for both fire prevention and building construction. It is applicable in every municipality of the State except the City of New York, which was permitted to retain its own code.

Although the Uniform Code took effect in 1984, its antecedents are much older. Beginning in the late 1940's, New York State began developing a code known as the State Building Construction Code, which provided standards for the construction of buildings and the installation of equipment therein. Developing and maintaining the State Building Construction Code eventually became the responsibility of the New York State Division of Housing and Community Renewal (DHCR). In the 1960's, DHCR began developing a second code, the State Building Conservation and Fire Prevention Code, to address fire safety practices in buildings. Both of these codes were applicable in a municipality only when affirmatively adopted by the governing body. The State Building Construction Code and the State Building Conservation and Fire Prevention Code were repealed effective January 1, 1984 when they were replaced by the Uniform Code.

In 1978, the State Legislature added Article 11 to the Energy Law to provide for a comprehensive energy conservation construction code applicable to all public and private buildings in New York State (including buildings located in the City of New York). Article 11, consisting of sections 11-101 through 11-110 of the Energy Law, sets forth the process by which the **State Energy Conservation Construction Code** (“Energy Code”) is to be developed, maintained, administered, and enforced for the conservation of energy in buildings in New York State. Both State government and local governments are participants in this process.

Current Uniform Code: Effective May 12, 2020, the Uniform Code consists of the 2020 editions of the New York State code books based upon the 2018 edition of model codes (2018 ICC Codes) published by the International Code Council. The following publications, each incorporated by reference into Parts 1220 to 1227 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (19 NYCRR)¹, in combination comprise the substantive provisions of the Uniform Code:

2020 Residential Code of New York State (2020 RCNYS)

2020 Building Code of New York State (2020 BCNYS)

2020 Plumbing Code of New York State (2020 PCNYS)

2020 Mechanical Code of New York State (2020 MCNYS)

2020 Fuel Gas Code of New York State (2020 FGCNYS)

2020 Fire Code of New York State (2020 FCNYS)

2020 Property Maintenance Code of New York State (2020 PMCNYS)

2020 Existing Building Code of New York State (2020 EBCNYS)

Current Energy Code: Effective May 12, 2020, the following publications are incorporated by reference into Part 1240 of Title 19 of the Official Compilation: the *2020 Energy Conservation Construction Code of New York State (2020 ECCCNY)* published by the International Code Council and the 2016 edition of the Energy Standard for Buildings Except Low-Rise Residential Buildings (ASHRAE 90.1-2016) published by the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc. Certain provisions of ASHRAE 90.1-2016 are deemed to be amended in the manner provided in 19 NYCRR section 1240.3.

Any updates to the Uniform Code and Energy Code after the date of this publication can be found at <https://dos.ny.gov/building-standards-and-codes>

CODE DEVELOPMENT AND MAINTENANCE

Responsibility for developing and maintaining the Uniform Code and the Energy Code is vested in the State Fire Prevention and Building Code Council (the “Code Council”), a seventeen-member body chaired by the Secretary of State and composed of the Secretary of State, the State Fire Administrator, and fifteen other members appointed by the Governor (seven with consent of the Senate). The Code Council is required to meet at least quarterly but additional meetings may be called by the chairman or by petition of five members of the Code Council.

Periodically both the Uniform Code and the Energy Code require amendment. The Uniform Code and the Energy Code are regulations, and any amendment of either code must be adopted pursuant to the rule making process set forth in the State Administrative Procedure Act (“SAPA”). In most situations, that process includes publishing a notice of proposed rule making in the New York State Register, specifying a period during which the public may submit comments on the proposed amendment, holding at least one hearing at which the public may present testimony regarding the proposed amendment, reviewing and assessing the comments and testimony received, and publishing a notice of adoption in the New York State Register. Generally, any amendment of the Uniform Code will become effective 90 days after publication of the notice of adoption; however, the Code Council has the authority to designate an earlier effective date if necessary to protect health, safety and security. An amendment of the Energy Code can be effective as early as the date of publication of the notice of adoption. However, when both the Uniform Code and Energy Code are amended at the same time, the effective dates are typically coordinated with each other. In addition, either code can be amended by adoption of an emergency rule, which can be effective as early as the date of filing of the notice of emergency adoption.

ADMINISTRATION AND ENFORCEMENT OF THE CODES

Although the task of developing and promulgating the Uniform Code is a State responsibility, Executive Law § 381 directs that each local government (city, town² or village) is responsible for administration and enforcement of the Uniform Code and Energy Code with respect to buildings located within the local government. Pursuant to a Department of State regulation (19 NYCRR Part 1201) counties are accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, the respective county. Unlike the earlier State Building Construction Code and State Building Conservation and Fire Prevention Code, the Uniform Code does not need to be affirmatively adopted by a local government. It is in effect by directive of the State Legislature. A local government that administers and enforces the Uniform Code and Energy Code is required to adopt local laws, ordinances, or other appropriate regulations that establish the local government’s code enforcement program. The code enforcement program must include the features described in the “minimum standards” regulations adopted by the Secretary of State. Local governments must enforce the Uniform Code and Energy Code through locally-appointed officers, although support services may be (and often are) contracted out to private organizations. Some local governments have entered into cooperative agreements under Article 5-G of the General Municipal Law. Such a pooling of resources has been attractive in rural areas. The Secretary of State is authorized to investigate local administration and enforcement of the Uniform Code and Energy Code and take remedial actions as warranted.

An individual city, town, or village cannot choose to exclude itself from the provisions of the Uniform

Code. However, Executive Law § 381 provides that a local government may decline to be the entity enforcing the code within its boundaries. The local government may adopt a local law stating that it will not enforce the code and thereafter responsibility for enforcement will pass to the county in which the particular city, town, or village is located. The transfer of responsibility will become effective the following January 1, provided the local governing body adopts the necessary local law prior to July 1. If a county declines to enforce the code, it may likewise adopt a local law to that effect and responsibility for code enforcement will immediately pass to the Department of State. Energy Law §11-107 provides that administration and enforcement of the Energy Code within a local government shall be conducted by the governmental entity responsible for administration and enforcement of the Uniform Code. The statute directs enforcement of the Energy Code in the manner prescribed by local law or ordinance or by the procedures adopted pursuant to Executive Law § 381 for administration and enforcement of the Uniform Code. Consequently, if a local government adopts a local law declining to administer and enforce the Uniform Code, the result is that the local government will also relinquish responsibility for administering and enforcing the Energy Code.

Should a local government choose to reassume responsibility for code enforcement, it may adopt a second local law to repeal the local law that states that the local government will not enforce the Uniform Code. Authority to administer and enforce the code will return to the local government as of the effective date of the second local law. The Department of State enforces the Uniform Code and the Energy Code in the place of only a limited number of local governments.

DEPARTMENT OF STATE RESPONSIBILITIES

The Department of State's Division of Building Standards and Codes (DBSC) provides a variety of services related to the Uniform Code and Energy Code including but not limited to serving as secretariat to the Code Council, assisting the Code Council with development and adoption of periodic updates and amendments to the Uniform Code and Energy Code, providing technical assistance to local governments and to regulated parties, administering applications for variances, delivering educational courses, overseeing the code enforcement practices of local governments, approving modular home construction plans, and administering a program for inspection of factories where modular homes are manufactured.

The DBSC has six regional field service offices that provide technical assistance and coordinate variance requests.

The DBSC also administers the State's manufactured housing program in conjunction with the Department of State's Division of Licensing Services. The Division of Licensing Services certifies manufacturers, retailers, installers, and mechanics of manufactured homes and the DBSC issues warranty seals to manufacturers and installers and maintains the quarterly warranty seal reports from manufacturers and installers. The DBSC also administers a dispute resolution program for resolution of complaints alleging that a "substantial defect" exists in the delivered condition, installation, service, or construction of a manufactured home.

The DBSC's Educational Services Unit provides a statewide code enforcement training program, having as its priority the basic training and continuing education of code enforcement officers. The DBSC's

services are available to elected and appointed officials, the general public, contractors, architects, engineers, and manufacturers.

VARIANCES FROM THE UNIFORM AND ENERGY CODE

In addition to serving as Chair of the Code Council, the Secretary of State is authorized to adopt regulations which prescribe minimum standards for administration and enforcement of the Uniform Code. Among the topics listed in Executive Law § 381 as appropriate subjects for the Secretary's regulations is the establishment of a procedure whereby provisions or requirements of the Uniform Code may be varied or modified in cases where strict compliance with the provision or requirement would entail practical difficulty or unnecessary hardship or would otherwise be unwarranted. In accordance with Executive Law § 381, the Secretary of State has promulgated procedures by which a person aggrieved may seek such a variance. Those procedures are set forth in 19 NYCRR Part 1205 (Uniform Code: Variance Procedures). 19 NYCRR Part 1205 provides for the creation of regional boards of review and empowers them to allow variances or modifications in particular cases where there is an appropriate, enumerated justification. Variance requests are reviewed and decided by regional boards of reviews. Part 1205 also provides that if the Department of State determines that a variance petition seeks a *de minimus* variance or modification that does not substantially affect the code's provisions for health, safety or security, the petition is treated as a "routine case" and the Department of State, not a board of review, makes the decision. The code enforcement official and fire official have the opportunity to comment on the request for variance prior to a variance being issued. Requests for variances from the Uniform Code are initiated by contacting the respective DBSC regional office.

The six regional boards of review each consists of five members: 1) a registered architect; 2) a professional engineer; 3) an individual with a background in building code enforcement; 4) an individual with a background in fire prevention; and 5) a businessperson or lawyer. Each member is a resident of the region served by the board to which he or she is appointed. A board may vary or modify a provision or requirement of the Uniform Code where the party seeking the variance has shown that strict compliance with the particular provision or requirement:

- would create an excessive and unreasonable economic burden;
- would not achieve the code's intended objective;
- would inhibit achievement of some other important public policy;
- would be physically or legally impracticable;
- would be unnecessary in light of alternatives which ensure achievement of the code's intended objective or in light of alternatives which, without a loss in the level of safety, achieve the code's intended objective more efficiently, effectively, or economically; or
- would entail a change so slight as to produce a negligible additional benefit consonant with the purposes of the code.

The boards of review also have the power to hear and decide appeals of any order or determination of an administrative official, such as a code enforcement official, enforcing the Uniform Code, or the failure within a reasonable time of such an official to make an order or determination. In hearing an appeal, actions the board may take, include but are not limited to:

1. sustaining, reversing, or modifying, in whole or in part, an order or determination, where one has been made; and
2. directing that an order, determination, permit, or authorization be issued, where one has not been made within a reasonable time.

Energy Law § 11-106 specifically provides for variances from the provisions of the State Energy Conservation Construction Code as follows:

§11-106. Variances and modifications.

1. Any standard or requirement of the code may be varied or modified, in whole or part, with regard to specific construction upon application made by or on behalf of an owner, where strict compliance with such standard or requirement would entail practical difficulty or cause any unnecessary hardship in relation to such construction, provided, however, that any such variance or modification shall provide for alternative energy conservation standards or requirements to achieve to the extent practicable the purposes of this article.
2. An application for a variance or modification of any standard or requirement of the code shall be made to the Secretary of State.

The basis for a variance or modification from the Energy Code is different than for the Uniform Code. The Energy Law requires that variances from the Energy Code include alternative provisions for energy conservation so as to achieve to the extent practicable the intent of Article 11 of the Energy Law. Requests for variances from the Energy Code are initiated by contacting the respective DBSC regional office. There are no application fees for processing of Energy Code variances. As with Uniform Code variances, the local code enforcement official has an opportunity to comment prior to a variance being issued. Variances are issued directly by the Department of State.

LOCAL PROGRAMS FOR ADMINISTRATION AND ENFORCEMENT OF THE CODES

Primary responsibility for administering and enforcing the Uniform Code and the Energy Code falls to the cities, towns, and villages of the State.³ Therefore, it is necessary for each municipal governing body to develop and implement a program for enforcement of the codes within municipal boundaries. Although, fire prevention, building construction, and energy standards are uniform throughout the State, municipal programs for enforcing such standards are not and should not be uniform. A municipal code enforcement program appropriate for a large city containing many apartment buildings and a downtown commercial core may not be an appropriate program for a rural town with a small population and mostly single-family homes. Local needs and conditions should be considered when designing a municipal code enforcement program.

Executive Law § 381 directs the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the Uniform Code. In response to that directive, the Secretary has adopted 19 NYCRR Part 1203 (Uniform Code: Minimum Standards for Administration and Enforcement).

Section 1203.2(a) of Part 1203 states:

Every city, village, town, and county responsible for administration and enforcement of either or both of the Codes shall establish a code enforcement program to provide for such administration and enforcement by local law, ordinance or other appropriate regulation. Such code enforcement program shall include the features and provisions described in section 1203.3 of this Part.

In most cities, towns, villages, and counties, implementation of a local program for administration and enforcement of the Uniform Code will require the adoption of a local law or ordinance. Some type of local legislation is necessary to empower the local enforcement program with the force of law. As the power of villages to enact ordinances was discontinued in 1974, villages will need to rely upon their power to adopt local laws when establishing their enforcement programs.

A FEATURES REQUIRED BY PART 1203

Part 1203 provides that every local government's code enforcement program must include certain features. The local government's governing body must establish a comprehensive coordinated program which contains all the features listed in Part 1203. Of necessity, some features of a local government's enforcement program will be the subject of local legislation, but others may be implemented through other methods. The choice of how to implement a local code enforcement program is left to the discretion of the local officials who are best able to assess local needs and circumstances in making their decision.

OVERVIEW OF REQUIRED FEATURES

This Section includes a brief overview of the features that must be included in a local government's code enforcement program. Additional information about these required features is included in the "In-Depth Discussion of Required Features" which follows this section.

A local government's code enforcement program must satisfy the following minimum standards:

1. **Designating Responsibility for Code Enforcement.** The persons, offices, departments, agencies or combinations thereof responsible for administration and enforcement of the Uniform Code and Energy Code must be clearly identified.
2. **Building Permits.** Building permits must be required for any work which is required to conform to the Uniform Code or Energy Code. Certain exceptions are permitted.
3. **Construction Inspections.** Inspections of certain specified elements of the construction process must be required. Building permits holders must keep work accessible and exposed until inspected and accepted by the local government.
4. **Stop Work Orders.** The code enforcement program must include procedures for the use of stop work orders to halt work that is determined to be contrary to provisions of the Uniform Code, Energy Code, or is

being conducted in a dangerous or unsafe manner, or is being performed without obtaining a required permit.

5. **Certificates of Occupancy or Compliance.** A certificate of occupancy or a certificate of compliance must be required (1) for all work for which a building permit was required and (2) whenever the general occupancy classification of a building is changed.
6. **Notifications.** The code enforcement program must include procedures for the chief of any fire department providing firefighting services for a property to notify the code enforcement official of any fire or explosion involving any structural damage, fuel burning appliance, chimney or gas vent.
7. **Unsafe Structures and Equipment.** The code enforcement program must include procedures for identifying and addressing unsafe structures and equipment.
8. **Operating Permits.** Operating permits must be required for conducting certain specified activities or using certain specified categories of buildings.
9. **Fire Safety and Property Maintenance Inspections.** The code enforcement program must provide for fire safety and property maintenance inspections of all buildings which contain an assembly area, public and private schools and colleges, all multiple dwellings, and all nonresidential occupancies. The interval between inspections of buildings containing an assembly area and for public and private schools and colleges cannot exceed one year. The interval between inspections of multiple dwellings and nonresidential occupancies cannot exceed three years. With respect to public and private schools and colleges, a local government may accept an inspection performed by the Office of Fire Prevention and Control or other authorized entity pursuant to Education Law §807-a and §807-b and/or Executive Law §156-e, in lieu of an inspection performed by the local government.
10. **Complaint Procedures.** The code enforcement program must include procedures for addressing bona fide complaints which assert that conditions or activities fail to comply with the Uniform Code or with local laws, ordinances or regulations adopted for administration and enforcement of the Uniform Code.
11. **Condition Assessments of Parking Garages.** The code enforcement program must include provisions requiring condition assessments of parking garages.
12. **Climatic and Geographic Design Criteria.** The local government responsible for administration and enforcement of the Uniform Code shall establish and make available climatic and geographic design criteria as required by the Uniform Code.
13. **Record Keeping.** The code enforcement program must establish a system of records of the features and activities specified above and of fees, if any, charged and collected.
14. **Reports.** Every local government responsible for administration and enforcement of the Uniform Code and Energy Code is required to submit an annual report of its activities relative to administration and enforcement of the Uniform Code and Energy Code to the Secretary of State.

IN-DEPTH DISCUSSION OF REQUIRED FEATURES

In establishing the minimum standards outlined above, the Secretary of State has sought to provide local governments with enough flexibility to allow for the establishment of programs appropriate for local conditions. The minimum features, therefore, may not be sufficient for the needs of a particular local government and that local government may choose to include more than the minimum in its enforcement program. In developing and implementing a program for enforcing the Uniform Code and Energy Code which satisfies the minimum standards, a local government should consider the following issues:

1 Designating Responsibility for Code Enforcement

Part 1203 specifies that, “the persons, offices, department, agencies, or combinations thereof, authorized and responsible for administration and enforcement of either or both of the Codes, or any portion thereof, shall be clearly identified.”

In assigning responsibility for enforcement of the Uniform Code or Energy Code, a local government may divide responsibility between various persons or departments, may establish a new department or office, or may utilize an existing agency. It may divide responsibilities, assigning, for example, enforcement relative to new construction, alterations, or conversions to a building department, enforcement relative to existing public and commercial buildings to the fire department, and enforcement relative to existing residential buildings to a housing department. Or, it may establish an overall code enforcement office incorporating not only responsibility for administration and enforcement of the Uniform Code and Energy Code, but also responsibility for other codes or regulations, such as local zoning. Whatever organizational approach is chosen, a local government must specify the official or combination of officials responsible for enforcement of the Uniform Code and Energy Code.

Part 1203 recognizes that a local government may wish to hire a contractor to provide services in connection with the administration of portions of the local government’s code enforcement program. While this is permissible, Part 1203 specifies that:

- where a local government relies upon the contracted-for services of an individual or business entity to perform any building safety inspector enforcement activities or code enforcement official enforcement activities on behalf of such local government, the local government shall satisfy itself that each individual performing such contracted-for enforcement activities has qualifications comparable to those of a person who has met the requirements of Part 1208 of Title 19 of the NYCRR applicable to building safety inspectors or code enforcement officials, respectively;
- no agreement shall be made by which building permits, certificates of occupancy, temporary certificates of occupancy, certificates of compliance,, orders or appearance tickets related to administration and enforcement of the Uniform Code or Energy Code are issued by other than public officers of the local government; and
- “Special inspections” (as defined in the Uniform Code), including but not limited to, electrical inspections, elevator inspections, welding inspections, and smoke control system inspections are not considered to be building safety inspector enforcement activities or code enforcement official enforcement activities (as defined in Part 1208 of this Title). Accordingly, a special inspector performing a special inspection is not performing a building safety inspector enforcement activity or a code enforcement official enforcement activity and is not required to have qualifications comparable to those of a person who has met the requirements of Part 1208 of this Title. However,

an authority having jurisdiction shall not accept or rely upon a special inspection unless the person performing such special inspection

- (i) is a qualified person employed or retained by an agency that has been approved by the authority having jurisdiction and
- (ii) has been approved by the authority having jurisdiction as having the competence necessary to inspect a particular type of construction requiring such special inspection.

2 Building Permits

Purpose of Building Permit Requirement. A building permit system is the typical method used by local authorities for determining whether proposed construction complies with relevant zoning laws and building codes. Requiring a building permit prior to the commencement of construction establishes a mechanism by which local authorities receive notice that construction is contemplated for a certain piece of property. Furthermore, an applicant for a building permit must provide information sufficient to enable the local official issuing the permit to make the determination that the proposed work will be in conformance with the requirements of the Uniform Code and/or Energy Code. Therefore, adoption of a building permit system provides a local government with the opportunity to review all proposed work for code compliance prior to the commencement of construction activity.

When a Building Permit Must be Required. A local government's code enforcement program must require any party who proposes to perform any work which must conform with the Uniform Code or Energy Code to obtain a building permit. However, the code enforcement program may exclude work in any of the following categories from the building permit requirement:

- construction or installation of one story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 144 square feet (13.88m²);
- construction of temporary sets and scenery associated with motion picture, television, and theater uses;
- installation of window awnings supported by an exterior wall of a one-or two- family dwelling or multiple single-family dwellings (townhouses);
- installation of partitions or movable cases less than 5'-9" in height;
- painting, wallpapering, tiling, carpeting, or other similar finish work;
- installation of listed portable electrical, plumbing, heating, ventilation, or cooling equipment or appliances;
- replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; and
- repairs, provided that the work does not impact fire and life safety, such as:
 - any part of the structural system;
 - the required means of egress,; or
 - the fire protection system or the removal from service any part of the fire protection system for any period of time.

Even if a local government elects to exclude work in the categories listed above from the building permit requirement, such work still must conform to all applicable provisions of the Uniform Code and Energy

Code.

While the Secretary's minimum standards allow a local government to exclude work in the categories listed above from the building permit requirement, a local government is not required to do so. A local government may elect to adopt a code enforcement program that requires building permits for all work which must conform with the Uniform Code and Energy Code, including work in the categories listed above. Local authorities may decide to adopt such a requirement in order to maintain a complete inventory of structures or construction within the community. Such an inventory may be useful for assessment, zoning, or other governmental purposes. However, as more fully discussed below, a local government's code enforcement program must require the issuance of a certificate of occupancy or certificate of compliance for all work which is subject to a building permit. Therefore, local governments should be aware that one consequence of adopting a code enforcement program that requires building permits for work in the categories listed above is to require the issuance of a certificate of occupancy or certificate of compliance when such work is completed.

Application for Building Permit. A local government's code enforcement program must provide for an application process that requests sufficient information to permit a determination that the intended work accords with the requirements of the Uniform Code and Energy Code. The code enforcement program must also require an applicant to submit, at minimum, the following information and documentation:

- a description of the location, nature, extent, and scope of the proposed work;
- the tax map number and the street address of any affected building or structure;
- the occupancy classification of any affected building or structure;
- where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code;
- any additional submittal documents in the format and quantity acceptable to the authority having jurisdiction as required by the applicable provisions of the Codes;
- any other information and documentation that the authority having jurisdiction may deem necessary to allow the authority having jurisdiction to determine that the proposed work conforms to the Codes; and
- construction documents (drawings and/or specifications) in the format and quantity acceptable to the authority having jurisdiction. Construction documents shall not be approved as part of an application for a building permit unless such documents show in sufficient detail that they contain the information and/or documentation required by the applicable provisions of the Uniform Code and Energy Code, and including but not limited to the following, where applicable:
 - describing the location, nature, extent, and scope of the proposed work;
 - showing that the proposed work will conform to the applicable provisions of the Uniform Code and Energy Code;
 - showing the location, construction, size, and character of all portions of the means of egress;
 - showing a representation of the building thermal envelope;
 - showing structural information including but not limited to braced wall designs; the size, section, and relative locations of structural members; design loads; and other pertinent structural information;
 - showing the proposed structural, electrical, plumbing, mechanical, fire-protection, and other service systems of the building;
 - a written statement indicating compliance with the Energy Code;
 - a site plan, drawn to scale and drawn in accordance with an accurate boundary survey, showing the size and location of new construction and existing structures and appurtenances on the site; distances from lot lines; the established street grades and the

- proposed finished grades; and, as applicable, flood hazard areas, floodways, and design flood elevations;
- evidence that the documents were prepared by a licensed and registered architect in accordance with Article 147 of the New York State Education Law or a licensed and registered professional engineer in accordance with Article 145 of the New York State Education Law and practice guidelines, including but not limited to the design professional's seal which clearly and legibly shows both the design professional's name and license number and is signed by the design professional whose name appears on the seal in such a manner that neither the name nor the number is obscured in any way, the design professional's registration expiration date, the design professional's firm name (if not a sole practitioner), and, if the documents are submitted by a professional engineering firm and not a sole practitioner professional engineer, the firm's Certificate of Authorization number; and
- include any other information and documentation that the authority having jurisdiction may deem necessary to allow the authority having jurisdiction to determine that the proposed work conforms to the Uniform Code and Energy Code.

Construction documents and any other submittal documents approved as part of a building permit application must be so marked in writing or by stamp.⁴ One set of accepted construction documents and other submittal documents must be retained by the local government, and one set must be returned to the applicant to be kept at the work site so as to be available for use by the code enforcement official.

Building Permit Application Review. Once a building permit application is accepted the construction documents must be reviewed for conformance with the Codes and if deemed to comply with the codes they shall be marked as accepted by the Code Enforcement Officer in writing or by stamp, or in the case of electronic media, an electronic marking. For paper copies one set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the Code Enforcement Personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a Building Permit will be issued. Work shall not be commenced until and unless a Building Permit is issued.

Contents of Building Permit. A building permit must contain a statement directing that all work shall be performed in accordance with the approved building permit application including any supporting information and documentation, such as construction documents, written statements, submittal documents, etc. In addition, a building permit must include the directive that the local government shall be notified immediately by the building permit holder in the event of changes occurring during construction.

Expiration Date. Building permits must be issued with a specific expiration date. In addition, a local government may provide that a building permit shall become invalid unless the work authorized is commenced within a specified period following issuance.

Revocation or Suspension. When a building permit has been issued in error because of incorrect, inaccurate or incomplete information, or if the work for which a building permit was issued violates the Uniform Code or Energy Code, the building permit shall be revoked or suspended until such time as the permit holder demonstrates that all work completed and all work proposed shall be in compliance with applicable provisions of the codes.

Building Permit to be Displayed. A local government’s code enforcement program must require that building permits be visibly displayed at the work site, and remain visible until the project has been completed.

3 Construction Inspections

Purpose of Construction Inspections. A comprehensive program of inspections is essential to successful code enforcement. An inspection is the single most effective way of insuring compliance with the Uniform Code and Energy Code. In addition, a program of inspections serves several other useful functions. It alerts building owners and users to the fact that the community is serious about building and fire safety standards. It can be instrumental in educating building owners about proper construction practices and proper fire safety practices. Inspections help to protect the honest citizen from being victimized by a builder who may wish to take ill-advised short cuts. They also provide the unwary citizen using a private or public building with some assurance that code provisions designed for public safety have been met.

Inspections conducted during the process of construction of a new structure or the alteration of an existing one is an effective method of enforcing the building construction provisions of the Uniform Code and Energy Code. Ideally, the first construction “inspection” is a review of the construction drawings and plans. Careful attention by the reviewer at this stage can avoid difficulties at a later time. Subsequent discovery of problems which should have been found during plan review can result in embarrassment for the local code enforcement program and extra costs for the builder or owner. Worse yet, problems may remain undetected and result in injury or economic loss.

Required Inspections. A local government’s code enforcement program must require inspections of the following elements of the construction process, where applicable:

- work site prior to the issuance of a permit;
- footing and foundation;
- preparation for concrete slab;
- framing;
- structural, electrical, plumbing, mechanical, fire-protection, and other similar service systems of the building;
- fire resistant construction;
- fire resistant penetrations;
- solid fuel burning heating appliances, chimneys, flues, or gas vents;
- energy code compliance, including but not limited to insulation, fenestration, air leakage, system controls, mechanical equipment size, and, where required, minimum fan efficiencies, programmable thermostats, energy recovery, whole-house ventilation, plumbing heat traps, high-performance lighting, and controls;⁵
- installation, connection, and assembly of factory manufactured buildings and manufactured homes; and
- a final inspection after all work authorized by the building permit has been completed.

The code enforcement program must require building permit holders to notify the local government when construction work is ready for inspection, and to keep all work accessible and exposed until inspected and accepted by the local government.

Results of Inspection / Reinspection. A local government’s code enforcement program must provide that after inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code, including a citation to the specific code provision or provisions that have not been met. The code enforcement program must provide that construction work not in compliance with code provisions shall remain exposed until it has been brought into compliance with the code, been re-inspected, and been found satisfactory as completed.

4 Stop Work Orders

A local government’s code enforcement program must provide for the issuance of stop work orders to halt work that is:

- determined to be contrary to provisions of the Uniform Code or Energy Code;
- being conducted in a dangerous or unsafe manner;
- being performed without obtaining a required permit; or
- when a building permit has been issued in error.

A stop work order must state the reason for its issuance and the conditions which must be satisfied before work will be permitted to resume.

5 Certificates of Occupancy or Compliance

Purpose of Certificate. Certificates of occupancy or certificates of compliance are terms used to identify a document that grants permission for the use of a building or structure for a specific type of use or occupancy. By issuing a certificate, a local government acknowledges that construction has been completed according to the requirements of the construction documents, building permit, Uniform Code, and Energy Code. The Certificate gives and grants permission for the building or structure to be used for the intended purpose, or confirms the work performed was completed properly.

When a certificate must be required. A local government’s code enforcement program must provide for the issuance of a certificate of occupancy or certificate of compliance for:

- all work which is the subject of a building permit; and
- all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or sub-classification to another.

Permission to use or occupy a building or structure, or portion thereof, for which a building permit was previously issued shall be granted only by issuance of a certificate of occupancy or a certificate of compliance.

Prerequisites to issuance of certificate. A local government's code enforcement program must provide that before a local government issues a certificate of occupancy or certificate of compliance:

- the building, structure, or work must be inspected;
- as a result of the inspection, the local government shall have determined that the building, structure, or work is in compliance with all applicable provisions of the Codes; and
- the local government must receive and review, where applicable:
 - a written statement of structural observations and/or a final report of special inspections, prepared in accordance with the provisions of the Uniform Code by such person or person as may be designated by or otherwise acceptable to the Code enforcement official;
 - flood hazard certifications, prepared in accordance with the provisions of the Uniform Code;
 - written statement of the results of tests performed to show compliance with the Energy Code and determine that the information in such statements adequately demonstrates compliance with the applicable provision of the Energy Code; and
 - verify the affixation of the appropriate seals, insignias, and manufacturers' data plates as required for factory manufactured buildings and/or manufactured homes.

Contents of certificate. A certificate of occupancy or certificate of compliance must contain the following information:

- the building permit number, if any;
- the date of issuance of the permit, if any;
- the name, address and tax map number of the property;
- if the certificate is not applicable to an entire structure, a description of that portion of the structure for which the certificate is issued;
- the use and occupancy classification of the structure;
- the type of construction of the structure;
- the occupant load of the assembly areas in the structure, if any;
- any special conditions imposed in connection with the issuance of the building permit;
- the signature of the official issuing the certificate and the date of issuance; and
- the date of issuance of the certificate of occupancy or certificate of compliance.

Temporary certificates. A local government's code enforcement program may authorize the issuance of a certificate allowing temporary occupancy of a structure prior to the completion of the work which is the subject of a building permit. However, such a temporary certificate may not be issued unless the local government determines that:

- the structure or portions thereof may be occupied safely;
- any required fire and life safety components, such as fire protection equipment and fire, smoke, carbon monoxide, and heat detectors and alarms have been installed and are operational; and
- all required means of egress from the structure have been provided.

A Temporary Certificate must include all the required items of Certificate of Compliance and shall specify the following:

- the portion or portions of the building or structure that may be occupied pursuant to the temporary certificate of occupancy

- any special terms or conditions of such occupancy that the authority having jurisdiction may deem to be appropriate to ensure the health and safety of the persons occupying and using the building or structure and/or performing further construction work in the building or structure.

The effectiveness of a temporary certificate must be limited to a specified period of time, during which the permit holder must be required to undertake to bring the structure into full compliance with applicable provisions of the Uniform Code and/or Energy Code.

Suspension or revocation of certificate. A local government’s code enforcement program must provide that a certificate of occupancy or certificate of compliance issued in error or on the basis of incorrect information shall be suspended or revoked if the relevant deficiencies are not corrected within a specified period of time.

6 Notifications

A local government’s code enforcement program must establish procedures for the chief of any fire department providing firefighting services for a property to promptly notify the Code Enforcement Official of any fire or explosion involving any structural damage, fuel burning appliance, chimney or gas vent.

7 Unsafe Structures and Equipment

A local government’s code enforcement program must establish procedures for identifying and addressing unsafe structures and equipment and conditions of imminent danger consistent with the requirements of the Uniform Code.

8 Operating Permits

A local government’s code enforcement program must require any party who proposes to conduct any of the following activities, or to use any of the following categories of buildings, to obtain an operating permit from the local government:

- manufacturing, storing or handling hazardous materials in quantities exceeding those listed in the applicable Maximum Allowable Quantity tables found in Chapter 50 of the 2020 *Fire Code of New York State* (FCNYS);
- buildings, structures, facilities, processes, and/or activities that are within the scope and/or permit requirements of the chapter or section title of the FCNYS listed and described as follow:
 - Chapter 22, “Combustible Dust-Producing Operations.” Facilities where the operation produces combustible dust;
 - Chapter 24, “Flammable Finishes.” Operations utilizing flammable or combustible liquids, or the application of combustible powders regulated by Chapter 24 of the FCNYS;
 - Chapter 25, “Fruit and Crop Ripening.” Operating a fruit- or crop-ripening facility or conducting a fruit-ripening process using ethylene gas;
 - Chapter 26, “Fumigation and Insecticidal Fogging.” Conducting fumigation or insecticidal fogging operations in buildings, structures, and spaces, except for fumigation or insecticidal fogging performed by the occupant of a detached one-family dwelling;
 - Chapter 31, “Tents, Temporary Special Event Structures, and Other Membrane

Structures.” Operating an air-supported temporary membrane structure, a temporary special event structure, or a tent where approval is required pursuant to Chapter 31 of the FCNYS;

- Chapter 32, “High-Piled Combustible Storage.” High-piled combustible storage facilities with more than 500 square feet (including aisles) of high-piled storage;
 - Chapter 34, “Tire Rebuilding and Tire Storage.” Operating a facility that stores in excess of 2,500 cubic feet of scrap tires or tire byproducts or operating a tire rebuilding plant;
 - Chapter 35, “Welding and Other Hot Work.” Performing public exhibitions and demonstrations where hot work is conducted, use of hot work, welding, or cutting equipment, inside or on a structure, except an operating permit is not required where work is conducted under the authorization of a building permit or where performed by the occupant of a detached one- or two-family dwelling;
 - Chapter 40, “Sugarhouse Alternative Activity Provisions.” Conducting an alternative activity at a sugarhouse;
 - Chapter 56, “Explosives and Fireworks.” Possessing, manufacturing, storing, handling, selling, or using, explosives, fireworks, or other pyrotechnic special effects materials except the outdoor use of sparkling devices as defined by Penal Law section 270;
 - Section 307, “Open Burning, Recreational Fires and Portable Outdoor Fireplaces.” Conducting open burning, not including recreational fires and portable outdoor fireplaces;
 - Section 308, “Open Flames.” Removing paint with a torch, or using open flames, fire, and burning in connection with assembly areas or educational occupancies; and
 - Section 319, “Mobile Food Preparation Vehicles.” Operating a mobile food preparation vehicle;
- energy storage systems, where the system exceeds the values shown in Table 1206.1 of the FCNYS or exceeds the permitted aggregate ratings in section R327.5 of the *2020 Residential Code of New York State*;
 - buildings containing one or more assembly areas with an occupant load of 50 persons or more;
 - outdoor events where the planned attendance exceeds 1,000 persons;
 - facilities that store, handle, or use hazardous production materials;
 - parking garages as defined in 19 NYCRR §1203.3(j);
 - buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by the authority having jurisdiction;
 - other processes or activities or for operating any type of building, structure, or facility at the discretion of the authority having jurisdiction.

The code enforcement program must require that the appropriate operating permit be obtained before any activity listed above, or the use of any building in any category listed above, is commenced. However, where specifically identified in their code enforcement program, an authority having jurisdiction may exempt from the requirement for an operating permit the processes or activities, or the buildings, structures, or facilities listed above, provided that the use is expressly authorized by a certificate of occupancy or certificate of compliance, required periodic fire safety and property maintenance inspections are performed, and required periodic condition assessments are performed.

If specifically allowed for by the local code enforcement program, a single operating permit may apply to more than one hazardous activity.

Application for operating permit. The application for an operating permit must contain sufficient

information to permit a determination that quantities, materials, and activities conform to the requirements of the Uniform Code.

Prerequisites to issuance of operating permit. A local government's code enforcement program must provide that before the local government issues an operating permit:

- such tests or reports as may be necessary to verify that quantities, materials, and activities conform to the requirements of the Uniform Code must be performed or obtained; and
- an inspection of the premises must be conducted.

After an inspection performed, the premises shall be noted as satisfactory and the operating permit shall be issued, or the operating permit holder shall be notified as to the manner in which the premises fails to comply with either or both of the Uniform Code and the code enforcement program, including a citation to the specific provision or provisions that have not been met.

Duration of operating permits. Operating permits may remain in effect until reissued, renewed or revoked, or may be issued for a specified period of time consistent with local conditions, but in no event to exceed:

- (i) 180 days for tents, special event structures, and other membrane structures;
- (ii) 60 days for alternative activities at a sugarhouse;
- (iii) three years for the activities, structures, and operations determined per 19 NYCRR §1203.3(g)(1)(ix), and
- (iv) one year for all other activities, structures, and operations identified in 19 NYCRR §1203.3(g)(1).

Revocation or suspension of operating permits. A local government's code enforcement program must provide that where activities do not comply with applicable provisions of the Uniform Code, an operating permit shall be revoked or suspended.

9 Fire Safety and Property Maintenance Inspections

Purpose of fire safety and property maintenance inspections. Periodic fire safety and property maintenance inspections are the best way to administer and enforce the maintenance and operations provisions set forth in the publications entitled *2020 Fire Code of New York State* and *2020 Property Maintenance Code of New York State*.

Properties that must be inspected. A local government's code enforcement program must provide for fire safety and property maintenance inspections of all buildings which contain an assembly area, all multiple dwellings, and all nonresidential occupancies.

Frequency of fire safety and property maintenance inspections. Effective December 30, 2022, Part 1203 includes provisions regarding the permitted intervals between fire safety and property maintenance inspections. A local government's code enforcement program must provide that fire safety and property maintenance inspections shall be performed at intervals consistent with local conditions, but in no event shall such intervals exceed:

- (i) one year for buildings which contain an assembly area;
- (ii) one year for public and private schools and colleges, including any buildings of such schools or colleges containing classrooms, dormitories, fraternities, sororities, laboratories, physical education, dining or recreational facilities; and

(iii) three years for multiple dwellings and all nonresidential occupancies.

Inspections of agricultural buildings and owner occupied one- and two-family dwellings. Part 1203 does not require regular, periodic inspections of (A) owner-occupied one and two-family dwellings, or (B) agricultural buildings used directly and solely for agricultural purposes, provided, however, that this shall not be a limitation on inspections conducted at the invitation of the owner or occupant, or where conditions on the premises threaten or present a hazard to public health, safety, or welfare. Fire safety and property maintenance inspections of owner occupied one- and two-family dwellings and agricultural buildings noted above are typically limited to situations where conditions on the premises threaten or present a hazard to public health, safety, or welfare. In some communities, voluntary home fire inspection programs have been established. Typically, these types of inspection programs are public education programs where participation is left to the discretion of the homeowner.

Consent or warrant. While a code enforcement program must provide for fire safety and property maintenance inspections of all buildings which contain an assembly area, all multiple dwellings, and all nonresidential occupancies, local governments must remember that, under the Fourth Amendment of the U.S. Constitution, property owners enjoy certain protections from searches or inspections by government authorities. Except in certain limited circumstances, public officials may not enter private premises in the absence of consent or a search warrant. Consequently, when municipalities conduct fire safety and property maintenance inspections, they should establish procedures which respect this constitutional right. For additional information on this topic, see the discussion of Constitutional Rights in Item “2” (Property Maintenance) of Section B (Supplemental Provisions) below.

10 Complaint Procedures

Part 1203 also requires local governments to establish, as part of their code enforcement program, procedures to address bona fide complaints which assert that conditions or activities fail to comply with the Uniform Code or with the local law or ordinance adopted by the local government for administration and enforcement of the Uniform Code. Such complaints may involve issues regarding construction, fire safety, property maintenance, or any other matter addressed by the Uniform Code, as well as issues addressed by the local law or ordinance establishing the local government’s code enforcement program. The procedures for addressing such complaints must include provisions for inspections, when appropriate, of the conditions or activities alleged to be in violation. Whenever an inspection reveals a problem or problems which must be corrected, one or more re-inspections may be needed. A fair inspection policy consistently applied should be the goal of the local government.

11 Condition Assessments of Parking Garages

Parking Garages. Parking garage is defined as any building or structure, or part thereof, in which all or any part of any structural level or levels is used for parking or storage of motor vehicles, excluding: (a) buildings in which the only level used for parking or storage of motor vehicles is on grade; (b) an attached or accessory structure providing parking exclusively for a detached one- or two-family dwelling; and (c) a townhouse unit with attached parking exclusively for such unit.

Condition Assessments. The term condition assessment means an on-site inspection and evaluation of a parking garage for evidence of deterioration of any structural element or building component, evidence of the existence of any unsafe condition, and evidence indicating that such parking garage is an unsafe structure. Condition assessments must be conducted by or under the direct supervision of a professional engineer, i.e. an individual who is licensed or otherwise authorized under Article 145 of the Education Law to practice the profession of engineering in the State of New York and who has at least three years of experience performing structural evaluations.

Initial Condition Assessments, Periodic Condition Assessments, Additional Condition Assessments.

Initial condition assessments of parking garages must be conducted prior to a certificate of occupancy or certificate of compliance being issued for new parking garages or by October 1, 2019 if originally constructed prior to January 1, 1984, by October 1, 2020 if originally constructed between January 1, 1984 and December 31, 2002, or by October 1, 2021 if originally constructed between January 1, 2003 and August 29, 2018. Thereafter, periodic condition assessments must be conducted at intervals fixed by the local government, but in no event to exceed three years. Additional condition assessments could be required before the date of the next periodic condition assessment if recommended by the responsible professional engineer or the local government.

Operating Permits and Fees. Local governments should collect condition assessment reports, review such reports, take such enforcement action or actions in response to the information in such reports (if necessary), and maintain such reports for the life of the parking garage. As noted above under Item “8” (Operating Permits), local governments should require parking garage owners to obtain an operating permit from the local government prior to operating a parking garage. Requiring an operating permit provides the local government with the necessary leverage to ensure that the condition assessments are completed and also allows the local government to charge fees for such permits to offset any associated administrative costs.

12 Climatic and Geographic Design Criteria

The local government responsible for administration and enforcement of the Uniform Code shall establish and make available climatic and geographic design criteria as required by the Uniform Code. This includes, but is not limited to:

- (1) Establishing design criteria to include ground snow load; wind design loads; seismic category; potential damage from weathering, frost, and termite; winter design temperature; whether ice barrier underlayment is required; the air freezing index; and the mean annual temperature;
- (2) Establishing heating and cooling equipment design criteria for structures within the scope of the *2020 Residential Code of New York State*. The design criteria shall include the data identified in the Design Criteria Table found in Chapter 3 of the *2020 Residential Code of New York State*; and
- (3) Establishing flood hazard areas, flood hazard maps, and supporting data. The flood hazard map shall include, at a minimum, special flood hazard areas as identified by the Federal Emergency Management Agency in the Flood Insurance Study for the community, as amended or revised with:
 - (i) the accompanying Flood Insurance Rate Map (FIRM);
 - (ii) Flood Boundary and Floodway Map (FBFM); and

(iii) related supporting data along with any revisions thereto.

For additional information to assist local governments in establishing the additional design criteria as required by section R301.2 of the *2020 Residential Code of New York State*, please see the Technical Bulletin TB-1009-RCNYS on the Department's website at: <https://dos.ny.gov/requirements-completing-table-r30121-2020-residential-code-new-york-state>.

13 Record Keeping

The need to maintain adequate records in connection with a municipal code enforcement program should be self-evident. Part 1203 requires each local government to establish and maintain a system of records of the features and activities described above in:

- Item “2” (Building Permits),
- Item “3” (Construction Inspections),
- Item “4” (Stop Work Orders),
- Item “5” (Certificate of Occupancy or Compliance),
- Item “6” (Notifications),
- Item “7” (Unsafe Structures and Equipment),
- Item “8” (Operating Permits),
- Item “9” (Fire Safety and Property Maintenance Inspections),
- Item “10” (Complaint Procedures),
- Item “11” (Condition Assessments of Parking Garages),
- Item “12” (Climatic and Geographic Design Criteria) above, and
- fees charged and collected.

Collecting a fee when a permit is issued or when some other code enforcement activity is performed can offset, in part, the costs incurred by a local government in operating an enforcement program. A fee schedule can be written into the local law or ordinance adopted by a local government to establish the enforcement program. However, if the local law simply authorizes the legislative body of a local government to establish a fee schedule, the legislative body will avoid the need to amend the local law each time an adjustment of the fee schedule becomes necessary.

Complete records will prove indispensable if a local government needs to institute legal action to enforce code compliance or if a lawsuit is instituted against the local government and its enforcement activities. In addition, records are helpful in establishing adequate budget and fee levels. The maintenance and retention of public records is governed by Article 57 of the Arts and Cultural Affairs Law. For further information on requirements concerning the storage and retention of public records, consult Article 57 or contact the New York State Archives at the following address:

New York State Archives
New York State Education Department
Cultural Education Center
Albany, NY 12230
<http://www.archives.nysed.gov/>

Local code enforcement officials should participate in the establishment of the recording and filing system and remain familiar with its continuing operation. Familiarity with the system should result in the

enforcement official making greater use of the system, thereby leading to a more effective enforcement program.

14 Reports

Every city, village, town, and county responsible for administration and enforcement of the Uniform Code must submit an annual report to the Secretary of State. The report must be on a form prescribed by the Secretary of State, and must include a report of the local government's activities relative to administration and enforcement of the Uniform Code.

Upon request of the Department of State, a local government must provide to the Department, from the records and related materials the local government is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of its activities in connection with the administration and enforcement of the Uniform Code. Failure to produce the requested materials shall permit an inference that the minimum standards of Part 1203 have not been met.

B **SUPPLEMENTAL FEATURES**

Part 1203 requires the specific program features described in Section A above to be included in the code enforcement programs of local governments. However, after consideration of local needs and circumstances, local officials may decide that additional features are necessary for an effective enforcement program within the local government. In fact, some supplemental features are, from a practical viewpoint, a necessary feature of any municipal enforcement program. Some supplemental features of a local code enforcement program are discussed below.

1 **Remedies**

Procedures to be followed when the code enforcement official discovers violations of the Uniform Code are a necessary part of any code enforcement program. Quick correction of the violation through voluntary compliance should be the goal of the local government. Voluntary compliance will not always be achieved, but it should always be attempted. Most parties, when found in violation of the code, will act to correct the violation. Occasionally, however, enforcement officials may face a party who fails or refuses to comply with provisions of the Uniform Code. An enforcement program must be prepared to deal with all types of violations which may arise.

When voluntary compliance efforts are unsuccessful, a local government should begin formal enforcement procedures. Executive Law § 382 empowers local governments to use civil, criminal, and administrative remedies in their enforcement of the Uniform Code. For example, local governments and their authorized agents are empowered to order, in writing, the remedying of any condition found to exist in, on, or about any building in violation of the Uniform Code. They are also empowered to issue appearance tickets for violations of the code. Furthermore, whenever the construction or use of a building is found to be in violation of the Uniform Code, local governments are permitted to seek an order from a justice of the Supreme Court of the State of New York directing either the removal of the building in question or an abatement of any conditions which are in violation of the code.

Criminal sanctions for code violations may be imposed pursuant to Executive Law § 382(2). Any person who fails to comply with an order to remedy a condition violating the code, such order having been served upon that individual either personally or by registered or certified mail, may be subject to a fine of not more than \$1,000 per day of violation and/or a term of imprisonment not to exceed one year. The regulations promulgated by the Department of State (19 NYCRR §1203.5) fix the time within which compliance with an order to remedy is required as within thirty days of the date of the order to remedy. In addition, those who knowingly violate any provisions of the code or a lawful order of a local government made thereunder may receive the same penalties.

As the minimum standards impose no requirements pertaining to procedures for correcting code violations in the absence of voluntary compliance, this is a feature of a local enforcement program which is left to the discretion of local officials. Local officials should consider local needs and circumstances when determining how the municipal enforcement program will address this issue. Administrative enforcement

methods, such as the stop-work order or the order to remedy within a specific time period, are procedures which may be utilized prior to seeking judicial remedies. A stop-work order directs that all construction activities cease until such time as the code violations are corrected and the code enforcement official thereafter rescinds the order. The order to remedy merely identifies the problem for the violator and directs its correction. These administrative tools often will resolve a problem and thereby avoid the need to obtain judicial intervention. There will be situations, however, where court action will be necessary to achieve code compliance.

Some local governments decide to utilize criminal sanctions for only the most egregious code violations. As an alternative, pursuant to Executive Law §382(3), where the construction or use of a building is in violation of any provision of the Uniform Code or any lawful order obtained thereunder, a justice of the supreme court, New York city civil court, a city court, district court or county court may order the removal of the building or an abatement of the condition in violation of such provisions. The choices in types of remedies available are numerous, thereby permitting a local government to design enforcement procedures to meet the specific needs of the community.

2 Property Maintenance

As indicated above, a code enforcement program must include provisions for periodic fire safety and property maintenance inspections of all buildings which contain an assembly area, all multiple dwellings, and all nonresidential occupancies. See Item “9” (Fire Safety and Property Maintenance Inspections) in Section A above. In addition, a code enforcement program must include procedures for addressing bona fide complaints, and those procedures must include provisions for inspections, when appropriate, of the condition or activity alleged to be in violation. See Item “10” (Complaint Procedures) in Section A above. Particularly with respect to parking garages, a code enforcement program must include provisions requiring condition assessments of parking garages. See Item “11” (Condition Assessments of Parking Garages) in Section A above.

Local governments may wish to consider incorporating additional provisions in their enforcement program to monitor the maintenance and condition of the local building stock. For example, a local government may wish to include in its code enforcement program provisions requiring a property maintenance inspection when there is a change of tenancy of a building.

To assure that property is maintained in accordance with the property maintenance and fire prevention standards of the Uniform Code, a local government may require issuance of permits for all buildings, including rental housing units. Some local governments have chosen to require what they call “certificates of occupancy” for each individual tenant. It is preferable, however, to refer to any document used in operation of a property maintenance program as a permit rather than a certificate of occupancy. As explained in Item “5” (Certificates of Occupancy or Compliance) in Section A above, such documents are generally associated with the completion of some type of construction. Therefore, the issuance of a document with such a title may lead to a misunderstanding as to what it is meant to represent.

Constitutional Rights

When establishing a system of inspections and/or permits for buildings, local governments should establish procedures which respect the constitutional rights of property owners. In general, in the absence of an emergency, a local government (or a person acting on behalf of a local government) should not conduct an

inspection of private property without (1) the voluntary, non-coerced consent of the owner or (2) a warrant. See, for example, Sokolov v. Village of Freeport, 52 N.Y.2d 341, 438 N.Y.S.2d 257 (1981). The Sokolov case involved local regulations which provided that an owner of residential property could not let or re-let the property without first obtaining a permit from the village, and which further provided that no permit could be issued without an inspection of the premises to determine that the property is “safe, clean, sanitary, in good repair, and free from rodents and vermin.” The New York State Court of Appeals held the ordinance to be unconstitutional because it effectively required a landlord to consent to a warrantless inspection of his property in order to obtain a rental permit.

While the Court of Appeals held that such an inspection must be made with either the consent of the owner or a warrant, the Court also noted that the standard for obtaining a warrant in an administrative context (such as code enforcement) is not as strict as the standard that applies in criminal cases:

“Although we hold that the rental permit ordinance of the Village of Freeport before us is unconstitutional, we take further note that this holding does no violence to the legitimate code enforcement goals of the village. As was observed in (Camara v. Municipal Ct., 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930), most citizens will allow inspections of their property without a warrant In addition, and of compelling significance, the *Camara* opinion expressly provided that the strict standards attending the issuance of a warrant in criminal cases are not applicable to the issuance of a warrant authorizing an administrative inspection. Thus, as the court reiterated in (See v. City of Seattle, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943), ‘[t]he agency’s particular demand for access will of course be measured, in terms of probable cause to issue a warrant, against a flexible standard of reasonableness that takes into account the public need for effective enforcement of the particular regulation involved’ ” (52 N.Y.2d at 348.)

Nevertheless, certain standards do apply, and a court that is asked to issue a warrant to conduct a fire safety or property maintenance inspection should consider those standards:

“We do not believe, however, that the requirement of a warrant for an administrative inspection is a hollow one. It has been postulated that, among other things, the warrant requirement may prevent inspections based upon caprice or spite and prevent administrative inspections as a pretext for police investigations; and the use of a warrant may also lead to appropriate restrictions on the place to be searched. The minor and infrequent inconvenience which a warrant requirement may create cannot overshadow the substantial benefits which will result to the individual’s dignity and liberty through the preservation of his right to privacy.” (52 NY 2d at 348-349, footnote and internal citations omitted.)

The Court of Appeals also stated that “(i)t must also be emphasized, however, that our holding is not to be construed as preventing prompt inspections in true emergency situations” (52 NY 2d at 349, citations omitted.)

CURRENT ADMINISTRATIVE STRUCTURE FOR RELATED SERVICES

Programs for administration and enforcement of the Uniform Code and the Energy Code may be combined with other programs in the local government related to land use or fire prevention. For example, zoning laws frequently require permits and certificates of occupancy which can be effectively combined with similar instruments used to enforce the Uniform Code and the Energy Code. Fire protection and education programs may already have some relation to code enforcement and may provide a source of manpower for code enforcement functions. Local needs and conditions should be considered when designing a municipal code enforcement program. The Department of State regulations prescribing minimum standards for administration and enforcement of the Uniform Code and the Energy Code provide local government officials with wide discretion in the design of a municipal enforcement program.

A SAMPLE LOCAL LAW PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THE NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE

NOTE: The sample local law is not included in this publication. Please visit the Department of State's website at <https://dos.ny.gov/code/local-government-state-agency-enforcement-programs> to access this sample local law.

The Department of State receives comments on this sample local law, and updates it from time to time to reflect such comments and other developments that come to the Department's attention. We urge you to visit the above website to determine if this model local law was updated.

PLEASE ALSO NOTE that this sample local law is provided for informational purposes only, and is intended to serve only as a guide that may be useful to an attorney in the drafting of an ordinance or local law. Any actual ordinance or local law should be prepared by the attorney for the local government proposing to adopt the ordinance or local law. The Department of State makes no warranties, guarantees, or representations of any kind as to the content, accuracy, or completeness of the information contained in this sample local law or elsewhere in this publication.

ENDNOTES

1. The Uniform Code also consists of Part 1228 of 19 NYCRR entitled “Rail Station” and Part 1229 of 19 NYCRR entitled “Other Uniform Code Provisions.”
2. The term “local government” is defined in Executive Law § 372(11) as “a village, town (outside the area of any incorporated village) or city.”
3. In light of the definition of the term “local government” quoted in the endnote 2 above, in any case where one or more villages lie entirely or partially within a town, the town is responsible for enforcing the codes within those parts of the town lying outside the area of any incorporated village, and each village is responsible for enforcing the codes within such village.
4. The local government is required to review the construction documents for compliance with both the Uniform Code and Energy Code, and the “writing and stamp” referred to in this sentence should indicate compliance with both codes. In addition, the Energy Code provides that when the building official issues a permit where construction documents are required, the construction documents shall be endorsed in writing and stamped “Reviewed for Energy Code Compliance.” See 2020 *Energy Conservation Construction Code of New York State* sections C105.3.1 and R105.3.1. The Department of State recommends that the writing and stamp that a local government puts on approved construction documents indicate that the documents have been reviewed for Uniform Code compliance and for Energy Code compliance. In the case of electronic media, an electronic marking shall be sufficient.
5. The Energy Code has specific requirements for inspections that must be performed to assure compliance. See 2020 *Energy Conservation Construction Code of New York State* sections C106.2 and R106.2. Each local government’s code enforcement program should include these required inspections within the “energy code compliance” component of its construction inspection program.