

RULE TEXT
(Part 1203 – Parking)

Section 1202.4 of Title 19 NYCRR is amended to add a new subdivision (c) to read as follows:

(c) Parking garages (as that term is defined in section 1203.3(j)(2)(iv) of Part 1203 of this Title) shall be subject to condition assessments in accordance with section 1203.3(j) of Part 1203 of this Title. It shall be the responsibility of the owner or operator of the parking garage to provide the Department of State with the condition assessment reports for any parking garages and to otherwise comply with section 1203.3(j) of Part 1203 of this Title. For the purposes of section 1203.3(j)(5), the period fixed by the Department of State's code enforcement program as the interval between periodic condition assessments shall be deemed to be three (3) years.

Subdivision (b) of section 1203.2 of Title 19 NYCRR is amended to read as follows:

(b) Every state agency accountable under section 1201.2(d) of this Title for administration and enforcement of the Uniform Code shall provide for such administration and enforcement in accordance with Part 1204 of this Title and section 1203.3(j) of this Part. For the purposes of section 1203.3(j)(5), the period fixed by the code enforcement program of each such state agency as the interval between periodic condition assessments shall be deemed to be three (3) years.

Paragraph (1) of subdivision (g) of section 1203.3 of Title 19 NYCRR is amended to read as follows:

(g) Operating permits.

(1) Operating permits shall be required for conducting [the activities or using the categories of buildings listed below] any activity listed in subparagraph (i), (ii), or (iii) below or operating any type of building or structure listed in subparagraphs (iv), (v), or (vi) below:

(i) manufacturing, storing or handling hazardous materials in quantities exceeding those listed in tables [2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4), of the Fire Code of New York State (see Part 1225 of this Title)] 5003.1.1(1), 5003.1.1(2), 5003.1.1(3) or 5003.1.1(4) of the 2015 edition of the International Fire Code (a publication currently incorporated by reference in Part 1225 of this Title);

(ii) hazardous processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling;

(iii) use of pyrotechnic devices in assembly occupancies;

(iv) buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; [and]

(v) parking garages as defined in subdivision (j) of this section; and

[(v)] (vi) buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by the government or agency charged with or accountable for administration and enforcement of the Uniform Code.

Subdivision (j) of section 1203.3 of Title 19 NYCRR is renumbered subdivision (k) and a new subdivision (j) is added to read as follows:

(j) Condition assessments of parking garages.

(1) General. Each authority having jurisdiction shall include in its code enforcement program provisions requiring condition assessments of parking garages. Such provisions shall include, at a minimum, the requirements and features described in this subdivision.

(2) Definitions. For the purposes of this subdivision:

(i) the term “authority having jurisdiction” means the city, town, village, county, State agency, or other governmental unit or agency responsible for administration and enforcement of the Uniform Code with respect to a parking garage;

(ii) 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 of such parking garage, evidence of the existence of any unsafe condition in such parking garage, and evidence indicating that such parking garage is an unsafe structure;

(iii) the term “deterioration” means the weakening, disintegration, corrosion, rust, or decay of any structural element or building component, or any other loss of effectiveness of a structural element or building component;

(iv) the term “parking garage” means 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;

(v) the term “professional engineer” means 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;

(vi) the term “responsible professional engineer” means the professional engineer who performs a condition assessment, or under whose supervision a condition assessment is performed, and who seals and signs the condition assessment report.

(vii) the term “unsafe condition” includes the conditions identified as “unsafe” in section 304.1.1, section 305.1.1, and section 306.1.1 of the 2015 edition of the International Property Maintenance Code (a publication currently incorporated by reference in Part 1226 of this Title); and

(viii) the term “unsafe structure” means a structure that is so damaged, decayed, dilapidated, or structurally unsafe, or is of such faulty construction or unstable foundation, that partial or complete collapse is possible.

(3) Condition assessments – general requirements. The owner or operator of each parking garage shall cause such parking garage to undergo an initial condition assessment as described in paragraph (4) of this subdivision, periodic condition assessments as described in paragraph (5) of this subdivision, and such additional condition assessments as may be required under paragraph (6) of this subdivision. Each condition assessment shall be conducted by or under the direct supervision of a professional engineer. A written report of each condition

assessment shall be prepared, and provided to the authority having jurisdiction, in accordance with the requirements of paragraph (7) of this subdivision. Before performing a condition assessment (other than the initial condition assessment) of a parking garage, the responsible professional engineer for such condition assessment shall review all available previous condition assessment reports for such parking garage.

(4) Initial condition assessment. Each parking garage shall undergo an initial condition assessment as follows:

(i) New parking garages shall undergo an initial condition assessment following construction and prior to a certificate of occupancy or certificate of compliance being issued for the structure,

(ii) Existing parking garages shall undergo an initial condition assessment no later than one year after the effective date of the rule adding this subdivision to 19 NYCRR section 1203.3.

(5) Periodic condition assessments. Following the initial condition assessment of a parking garage, such parking garage shall undergo periodic condition assessments at intervals not to exceed the lesser of:

(i) three (3) years, or

(ii) at such shorter period as may be fixed by the authority having jurisdiction in its code enforcement program.

(6) Additional condition assessments.

(i) If the latest condition assessment report for a parking garage includes a recommendation by the responsible professional engineer that an additional condition assessment of such parking garage, or any portion of such parking garage, be performed before the date by which the next periodic condition assessment would be required under paragraph (5) of this

subdivision, the authority having jurisdiction shall require the owner or operator of such parking garage to cause such parking garage (or, if applicable, the portion of such parking garage identified by the responsible professional engineer) to undergo an additional condition assessment no later than the date recommended in such condition assessment report.

(ii) If the authority having jurisdiction becomes aware of any new or increased deterioration which, in the judgment of the authority having jurisdiction, indicates that an additional condition assessment of the entire parking garage, or of the portion of the parking garage affected by such new or increased deterioration, should be performed before the date by which the next periodic condition assessment would be required under paragraph (5) of this subdivision, the authority having jurisdiction shall require the owner or operator of such parking garage to cause such parking garage (or, if applicable, the portion of the parking garage affected by such new or increased deterioration) to undergo an additional condition assessment no later than the date determined by the authority having jurisdiction to be appropriate.

(7) Condition assessment reports. The responsible professional engineer shall prepare, or directly supervise the preparation of, a written report of each condition assessment, and shall submit such condition assessment report to the authority having jurisdiction within such time period as fixed by the authority having jurisdiction. Such condition assessment report shall be sealed and signed by the responsible professional engineer, and shall include:

(i) an evaluation and description of the extent of deterioration and conditions that cause deterioration that could result in an unsafe condition or unsafe structure;

(ii) an evaluation and description of the extent of deterioration and conditions that cause deterioration that, in the opinion of the responsible professional engineer, should be remedied immediately to prevent an unsafe condition or unsafe structure;

(iii) an evaluation and description of the unsafe conditions;

(iv) an evaluation and description of the problems associated with the deterioration, conditions that cause deterioration, and unsafe conditions;

(v) an evaluation and description of the corrective options available, including the recommended timeframe for remedying the deterioration, conditions that cause deterioration, and unsafe conditions;

(vi) an evaluation and description of the risks associated with not addressing the deterioration, conditions that cause deterioration, and unsafe conditions;

(vii) the responsible professional engineer's recommendation regarding preventative maintenance;

(viii) except in the case of the report of the initial condition assessment, the responsible professional engineer's attestation that he or she reviewed all previously prepared condition assessment reports available for such parking garage, and considered the information in the previously prepared reports while performing the current condition assessment and while preparing the current report; and

(ix) the responsible professional engineer's recommendation regarding the time within which the next condition assessment of the parking garage or portion thereof should be performed. In making the recommendation regarding the time within which the next condition assessment of the parking garage or portion thereof should be performed, the responsible professional engineer shall consider the parking garage's age, maintenance history, structural condition, construction materials, frequency and intensity of use, location, exposure to the elements, and any other factors deemed relevant by the responsible professional engineer in his or her professional judgment.

(8) The authority having jurisdiction shall review each condition assessment report. The authority having jurisdiction shall take such enforcement action or actions in response to the information in such condition assessment report as may be necessary or appropriate to protect the public from the hazards that may result from the conditions described in such report. In particular, but not by way of limitation, the authority having jurisdiction shall, by Order to Remedy or such other means of enforcement as the authority having jurisdiction may deem appropriate, require the owner or operator of the parking garage to repair or otherwise remedy all deterioration, all conditions that cause deterioration, and all unsafe conditions identified in such condition assessment report pursuant to subparagraphs (ii) and (iii) of paragraph (7). All repairs and remedies shall comply with the applicable provisions of the Uniform Code. Neither this paragraph nor the provisions of the code enforcement program of the authority having jurisdiction that implement this paragraph shall limit or impair the right of the authority having jurisdiction to take any other enforcement action, including but not limited to suspension or revocation of a parking garage's operating permit, as may be necessary or appropriate in response to the information in a condition assessment report.

(9) The authority having jurisdiction shall retain all condition assessment reports for the life of the parking garage. Upon request by a professional engineer who has been engaged to perform a condition assessment of a parking garage, and who provides the authority having jurisdiction with a written statement attesting to the fact that he or she has been so engaged, the authority having jurisdiction shall make the previously prepared condition assessment reports for such parking garage (or copies of such reports) available to such professional engineer. The authority having jurisdiction shall be permitted to require the owner or operator of the subject

parking garage to pay all costs and expenses associated with making such previously prepared condition assessment reports (or copies thereof) available to the professional engineer.

(10) Neither this subdivision nor the provisions of the code enforcement program of the authority having jurisdiction that implement this subdivision shall limit or impair the right or the obligation of the authority having jurisdiction:

(i) to perform such construction inspections as are required by the stricter of subdivision (b) of this section or the code enforcement program of the authority having jurisdiction;

(ii) to perform such periodic fire safety and property maintenance inspections as are required by the stricter of subdivision (h) of this section or the code enforcement program of the authority having jurisdiction; and/or

(iii) to take such enforcement action or actions as may be necessary or appropriate to respond to any condition that comes to the attention of the authority having jurisdiction by means of its own inspections or observations, by means of a complaint, or by any other means other than a condition assessment or a report of a condition assessment.

(11) The use of the term “responsible professional engineer” in this subdivision shall not be construed as limiting the professional responsibility or liability of any professional engineer, or of any other licensed professional, who participates in the preparation of a condition assessment without being the responsible professional engineer for such condition assessment.

Newly renumbered (k) of section 1203.3 of Title 19 NYCRR is amended to read as follows:

[(j)](k) Recordkeeping.

A system of records of the features and activities specified in subdivisions (a) through [(i)] (j) of this section and of fees charges and collected, if any, shall be established and maintained.

Section 1204.12 of Title 19 NYCRR is amended by adding a new subdivision (e) to read as follows:

(e) In addition to the periodic fire safety inspections of buildings within its custody required by subdivision (a), each State agency shall commence a program of having condition assessments conducted of parking garages within its custody in accordance with section 1203.3(j) of Part 1203 of this Title.