



NEW YORK STATE DEPARTMENT OF STATE  
Division of Building Standards and Codes  
One Commerce Plaza - 99 Washington Ave  
Albany, NY 12231

Phone: (518) 474 4073  
[www.dos.ny.gov](http://www.dos.ny.gov)

Fax: (518) 486 4487  
Email: [info@dos.ny.gov](mailto:info@dos.ny.gov)



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## TECHNICAL BULLETIN

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### 19 NYCRR 1203.5: Time Fixed for Compliance with Orders to Remedy

Issued January 12, 2015

On Monday January 12, 2015, the New York Department of State adopted a regulation that fixes the time within which a person served with an Order to Remedy violation(s) of the Uniform Fire Prevention and Building Code (Uniform Code) must comply with that Order. Specifically, the regulation provides that an Order to Remedy a condition in violation of the Uniform Code must state that full compliance with the Order is required within 30 days after the date of the Order.

The regulation was added as a [new section 1203.5 to 19 NYCRR Part 1203](#). Part 1203 establishes minimum standards for administration and enforcement of the Uniform Code. All cities, towns, villages, counties, and State agencies that are responsible for the administration and enforcement of the Uniform Code are required to comply with Part 1203, including the newly added section 1203.5.

Adoption of this regulation as an emergency rule makes it effective immediately upon filing.

#### Reasons for Adoption of [section 1203.5](#)

Executive Law § 382(2) provides that a person who is served with an Order to Remedy and who fails to comply with that Order within the time fixed by Department of State regulations, such time period to be stated in such order, may be subject to a fine of up to \$1,000 per day of violation, imprisonment up to one year, or both.

Prior to the adoption of [new section 1203.5](#), no regulation adopted by the Department of State "fixed" a time within which a person served with an Order to Remedy must comply with that order. In general, local governments that issued Orders to Remedy would determine a "reasonable time" within which compliance with the Order would be required.

In a recent decision entitled [People v. Plateau Associates, LLC](#), the New York State Supreme Court, Appellate Term, Second Department, held that in the absence of a Department of State regulation fixing the time within which compliance with an Order to Remedy is required, a party served with such an order could not be charged under Executive Law § 382(2) for failure to comply with such Order within the time fixed by regulation for such compliance. The Court rejected the argument that the local government that issued the Order to Remedy should be permitted to determine the "reasonable time" within which compliance with the Order to Remedy would be required.

With the adoption of [new section 1203.5](#), a city, town, village, county or State agency that issues an Order to Remedy must specify in the Order that the person served with the Order must fully comply with the Order within 30 days of the date of the Order. (As will be more fully discussed below, the new regulation specifies the form of a statement that must be included in each Order to Remedy). On or after January 12, 2015, if the person served with the Order to Remedy fails to comply fully with the Order within 30 days of the date of the Order, the city, town, village, county or State agency that issued an Order will be able to charge that person under Executive Law § 382(2), and will be able to allege (1) that the person was served with an Order to Remedy, and (2) that the person failed to comply with the Order within 30 days after the date of the Order, which is the time “fixed” by the Department of State’s regulations and the time “stated” in the Order.

## **Rule 1203.5 Highlights for Local Governments**

While cities, towns, villages, counties, and State agencies that enforce the Uniform Code should ensure that their code enforcement personnel are familiar with all of the provisions of [new section 1203.5](#), the Department of State wishes to call particular attention to the following provisions and requirements.

1. ALL ORDERS TO REMEDY ISSUED ON OR AFTER JANUARY 12, 2015 MUST STATE THE DATE OF THE ORDER AND MUST INCLUDE A STATEMENT SUBSTANTIALLY SIMILAR TO THE FOLLOWING:

NOTICE: Full compliance with this order to remedy is required by \_\_\_\_\_ [specify date], which is thirty (30) days after the date of this order. If the person or entity served with this order to remedy fails to comply in full with this order to remedy within the thirty (30) day period, that person or entity will be subject to a fine of not more than \$1,000 per day of violation, or imprisonment not exceeding one year, or both.

[See 19 NYCRR 1203.5\(b\)](#).

2. ALL ORDERS TO REMEDY ISSUED ON OR AFTER JANUARY 12, 2015 MUST BE SERVED, PERSONALLY OR BY CERTIFIED OR REGISTERED MAIL, WITHIN FIVE (5) DAYS OF THE DATE OF THE ORDER. [See 19 NYCRR 1203.5\(c\)](#). This requirement ensures that the person served with an Order to Remedy has at least 25 days following the date of service of the Order in which to comply with the Order.

NOTE: If the city, town, village or State agency issuing an Order to Remedy does not serve the Order within five days of the date of the Order, the city, town, village or State agency must issue a new Order, and should ensure that the new Order is served within 5 days of the date of the new Order.

3. Although an Order to Remedy a condition in violation of the Uniform Code must require full compliance within thirty (30) days of the date of the Order, the city, town, village, county or State agency issuing the Order may include a provision in the Order directing the person served with the Order to begin to remedy the violation(s) immediately or within some other stated period of time that can be less than thirty days after the date of the Order. See [19 NYCRR 1203.5\(d\)](#).

4. This new rule does not limit the authority of any city, village, town, county or State agency to employ any other means of enforcing the Uniform Code and/or Energy Code, including, but not limited to:
  1. issuing notices of violation;
  2. issuing appearance tickets;
  3. commencing and prosecuting an appropriate action or proceeding pursuant to that part of subdivision 2 of section 382 of the Executive Law that provides that any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in the "construction" (as defined in subdivision 4 of section 372 of the Executive Law) of any building who shall knowingly violate any of the applicable provisions of the Uniform Code or any lawful order of a city, village, town, county, state agency or the Secretary of State made thereunder regarding standards for construction, maintenance, or fire protection equipment and systems, shall be subject to a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both;
  4. commencing and prosecuting an appropriate action or proceeding pursuant to subdivision 3 of section 382 of the Executive Law which seeks, in a case where the construction or use of a building is in violation of any provision of the Uniform Code or any lawful order obtained thereunder, an order from a Justice of the Supreme Court directing the removal of the building or an abatement of the condition in violation of such provisions;
  5. issuing stop work orders;
  6. revoking or suspending building permits; revoking or suspending certificates of occupancy; or
  7. commencing and prosecuting an appropriate action or proceeding to impose such criminal and/or civil sanctions as may be provided in applicable local laws, ordinances, rules or regulations.

[See 19 NYCRR 1203.5\(e\).](#)