



**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

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Contents

BACKGROUND	4
CODE DEVELOPMENT AND MAINTENANCE	3
ADMINISTRATION AND ENFORCEMENT OF THE CODES	3
DEPARTMENT OF STATE RESPONSIBILITIES	4
VARIANCES FROM THE UNIFORM CODE AND THE ENERGY CODE	5
LOCAL PROGRAMS FOR ADMINISTRATION AND ENFORCEMENT OF THE CODES	6
A FEATURES REQUIRED BY PART 1203	7
OVERVIEW OF REQUIRED FEATURES	7
IN-DEPTH DISCUSSION OF REQUIRED FEATURES	9
1 Designating Responsibility for Code Enforcement.....	9
2 Building Permits	10
3 Construction Inspections.....	12
4 Stop Work Orders	13
5 Certificates of Occupancy or Compliance	13
6 Notifications.....	15
7 Unsafe Structures and Equipment.....	15
8 Operating Permits	15
9 Fire Safety and Property Maintenance Inspections.....	16
10 Complaint Procedures	17
11 Record Keeping	17
12 Reports	18
B SUPPLEMENTAL FEATURES	19
1 Remedies.....	19
2 Property Maintenance	20
Constitutional Rights.	20
CURRENT ADMINISTRATIVE STRUCTURE FOR RELATED SERVICES	22
A SAMPLE LOCAL LAW PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THE NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE	22

BACKGROUND

In 1981, the New York State Legislature enacted legislation directing the development and implementation of an integrated building and fire code for the State. Prior to the adoption of this legislation, the decision as to whether to adopt and enforce a building and/or fire prevention code had been left to the discretion of local governments in New York. 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.

Finding this situation unacceptable 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 January 1, 2003, the Uniform Code consists of several subunits, each based on a model code developed by the International Code Council. The following publications, each incorporated by reference into Parts 1220 to 1226 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (19 NYCRR), in combination comprise the substantive provisions of the Uniform Code:

Residential Code of New York State (RCNYS)

Building Code of New York State (BCNYS)

Plumbing Code of New York State (PCNYS)

Mechanical Code of New York State (MCNYS)

Fuel Gas Code of New York State (FGNYS)

Fire Code of New York State (FCNYS)

Property Maintenance Code of New York State (PMCNYS)

Effective January 1, 2008, Part 1227, the *Existing Building Code of New York State (EBCNYS)* was added to Title 19 NYCRR.

Existing Building Code of New York State (EBCNYS)

Provisions that have been added to the Uniform Code after the publication of the publications mentioned above are included in Parts 1220 to 1227 of Title 19 NYCRR.

In addition, a new Part 1228 was added to Title 19 NYCRR on April 5, 2007. New Part 1228 contains certain additional provisions which have been added to the Uniform Code, but which are not included in Parts 1220 to 1227 or in the publications mentioned in Parts 1220 to 1227. The provisions contained in Part 1228 are part of the Uniform Code.

Current Energy Code: Effective July 3, 2002, the State Energy Conservation Construction Code is based on a model energy code, developed by the International Code Council. The following publication is incorporated by reference into Part 1240 of Title 19 of the Official Compilation:

Energy Conservation Construction Code of New York State (ECNYS)

Major updates to the Uniform Code and Energy Code have occurred since 2002/2003, including effective dates of implementation and editions of International Codes utilized as the basis for the code updates, and can be found at http://www.dos.ny.gov/DCEA/code_timeline.html.

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 composed of State officials, local government officials, and members from the private sector. Originally, the Code Council was part of the Division of Homes and Community Renewal (“HCR”) and the Commissioner of HCR served as its chair. In 1996, the Code Council was transferred to the Department of State, and the Secretary of State now serves as chair. 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, the amendment 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.

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 the cities, towns, and villages of the State shall be responsible for enforcing the code. 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 municipality. It is in effect by directive of the State Legislature.

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 municipality may decline to be the entity enforcing the code within its boundaries. The municipality 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 municipality 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 municipality adopts a local law declining to administer and enforce the Uniform Code, the result is that the municipality will also relinquish responsibility for administering and enforcing the Energy Code.

Should a municipality choose to reassume responsibility for code enforcement, it may adopt a second local law to repeal the local law that states that the municipality will not enforce the Uniform Code. Authority to administer and enforce the code will return to the municipality 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 performs a number of functions which support the operation of the Code Council and the enforcement of the code by local governments. Functions of the Department associated with the Uniform Code and the Energy Code are performed by the Division of Building Standards and Codes (Codes Division).

Direct service to the public is provided primarily through the activities of the **Regional Services Unit** whose staff are located in regional offices throughout the State. Among the services provided by this unit is the general administration and enforcement of the code in those municipalities which have declined to enforce the code themselves; processing routine variance petitions; and serving as technical advisors to the members of the regional boards of review which hear and decide petitions for more complex variances (see the section entitled “Variances From the Uniform Code and Energy Code” below for further information on variances). The unit also provides technical assistance on code issues to government officials.

The **Educational Services Unit** coordinates all matters regarding the training of code enforcement personnel and conducts both basic and in-service training classes for local code enforcement officials, fire officials, design professionals, and other State agency staff. In accordance with 19 NYCRR Part 1208 code enforcement personnel must complete a prescribed minimum basic code enforcement training program.

The **Technical Services Unit** certifies that Modular Building manufacturers’ plans comply with the Uniform Code and Energy Code, and issues the insignias placed on those modular buildings, in accordance with 19 NYCRR Part 1209. Its Manufactured Home Certification program is responsible for certifying the manufacturers, retailers, installers and mechanics of manufactured homes in the state and providing consumer protection through dispute resolution and investigations of fraudulent and dishonest industry practices, in accordance with 19 NYCRR Part 1210. Staff also disseminates information through Technical Bulletins and Code Interpretations.

The **Energy Unit** works to ensure that at least 90 percent of new and renovated residential and commercial construction in NYS will comply with the Energy Code by 2015. The unit also answers technical assistance requests regarding the Energy Code; and provides Energy Code training.

The **Code Development Unit** serves as support staff for Code Council operations, updating the Uniform Code and the Energy Code, as well as and reviewing municipal governments' requests for more restrictive local standards (MRLS). A list of local governments having MRLS can be found at <http://www.dos.ny.gov/DCEA/mrls.html>.

The Division also provides **Disaster Response** assistance in affected areas by performing rapid assessments of buildings affected by disasters, filling out an evaluation form for each building, and providing the evaluation forms to the Authority Having Jurisdiction. These building evaluations are performed by teams consisting of members of the Division, along with volunteer code enforcement officials from Local Governments across the State.

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. 19 NYCRR Part 1205 (Uniform Code: Variance Procedures) establishes a dual process for obtaining variances from Uniform Code provisions. Cases which involve a de minimus variance or modification that does not substantially affect the code's provisions for health, safety or security are classified as routine cases and are processed administratively by the Department of State. The code enforcement official and fire official have the opportunity to comment on the request for variance prior to a variance being issued. Substantive variance requests are reviewed and decided by regional boards of review. Requests for variances from the Uniform Code are initiated by contacting the regional offices of the Codes Division.

The six regional boards of review each consist 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 businessman 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 regional office of the Codes Division or the Energy Services Unit in the Codes Division. Site visits, if deemed necessary, are conducted by technical staff in the Regional Services Unit. 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. 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, charged under subdivision 2 of section 381 of the Executive Law with administration and enforcement of the Uniform Code shall provide for such administration and enforcement by local law, ordinance or other appropriate regulation.

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 municipality'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 must be clearly identified.
2. **Building Permits.** Building permits must be required for any work which is required to conform to the Uniform 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 municipality.
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, 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 fire fighting 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 area of public assembly, all multiple dwellings, and all nonresidential occupancies. The interval between inspections of buildings containing an area of public assembly cannot exceed one year. The interval between inspections of multiple dwellings and nonresidential occupancies must be consistent with local conditions; provided, however, that such interval cannot exceed one year for dormitory buildings, and such interval cannot exceed three years for all other buildings.
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. **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.
12. **Reports.** Every municipality responsible for administration and enforcement of the Uniform Code is required to submit an annual report of its activities relative to administration and enforcement of the Uniform 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 locality and the municipality may choose to include more than the minimum in its enforcement program. In developing and implementing a program for enforcing the Uniform Code which satisfies the minimum standards, a municipal governing body 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 the Uniform Code, or any portion thereof, shall be clearly identified.”

In assigning responsibility for enforcement of the Uniform 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, but also responsibility for other codes or regulations, such as local zoning. Whatever organizational approach is chosen, a municipality must specify the official or combination of officials responsible for enforcement of the Uniform Code.

Part 1203 recognizes that a local government may wish to hire a contractor to provide services in connection with administration of portions of the municipality’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, partnership, business corporation or similar firm for the principal part of an administration and enforcement program, the municipality shall satisfy itself that any such provider has qualifications comparable to those of an individual who has met the requirements of Part 434 of Title 19 of the NYCRR; and
- no agreement shall be made by which building permits, certificates, orders or appearance tickets related to administration and enforcement of the Uniform Code are issued by other than public officers.

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. Therefore, adoption of a building permit system provides a municipality 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 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);
- installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;
- installation of fences which are not part of an enclosure surrounding a swimming pool;
- construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;
- construction of temporary motion picture, television and theater stage sets and scenery;
- 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 such repairs do not involve:
 - the removal or cutting away of a loadbearing wall, partition, or portion thereof, or of any structural beam or load bearing component;
 - the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress;
 - the enlargement, alteration, replacement or relocation of any building system;

- the removal from service of all or part of a 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.

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, 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. The code enforcement program must also require an applicant to submit the following information and documentation:

- a description of the proposed work;
- the tax map number and the street address;
- 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; and
- at least two sets of construction documents (drawings and/or specifications) that define the scope of the proposed work. Construction documents shall not be accepted as part of an application for a building permit unless such documents:
 - are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law;
 - indicate with sufficient clarity and detail the nature and extent of the work proposed;
 - substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and
 - where applicable, include a site plan that shows any existing and proposed structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the structures and the lot lines.

Construction documents that have been accepted as part of a permit application must be so marked in writing or by stamp. One set of accepted construction documents must be retained by the municipality, 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.

Contents of Building Permit. A building permit must contain a statement directing that all work shall be performed in accordance with the construction documents submitted and accepted as part of the application. In addition, a building permit must include the directive that the local government shall be notified immediately 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, 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 code.

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. 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. 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;
- building systems, including underground and rough-in;
- fire resistant construction;
- fire resistant penetrations;
- solid fuel burning heating appliances, chimneys, flues or gas vents;
- energy code compliance; 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 municipality when construction work is ready for inspection, and to keep all work accessible and exposed until inspected and accepted by the municipality.

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. 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 reinspected, 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;
- being conducted in a dangerous or unsafe manner; or
- being performed without obtaining a required permit.

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 and grants permission for the building or structure to be used for the intended purpose.

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 subclassification 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 municipality issues a certificate of occupancy or certificate of compliance:

- the building, structure or work must be inspected; and
- the municipality must receive, 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 persons as may be designated by or otherwise acceptable to the Code enforcement official; and
 - flood hazard certifications, prepared in accordance with the provisions of the Uniform Code.

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 assembly occupant load of the structure, if any;
- if an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
- any special conditions imposed in connection with the issuance of the building permit; and
- the signature of the official issuing the certificate and the date of issuance.

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 fire- and smoke-detecting or fire protection equipment which has been installed is operational; and
- all required means of egress from the structure have been provided.

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.

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.

8 Operating Permits

When an operating permit must be required. 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 municipality:

- 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*;
- 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;
- use of pyrotechnic devices in assembly occupancies;
- buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
- 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.

The code enforcement program must provide 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.

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.

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.

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 *Fire Code of New York State* and *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 area of public assembly, all multiple dwellings, and all nonresidential occupancies.

Frequency of fire safety and property maintenance inspections. Effective January 1, 2007, Part 1203 includes new provisions regarding the permitted intervals between fire safety and property maintenance inspections. A local government's code enforcement program must provide that:

- the interval between fire safety and property maintenance inspections of buildings containing an area of public assembly cannot exceed one year; and
- the interval between fire safety and property maintenance inspections of multiple dwellings and nonresidential occupancies must be consistent with local conditions; provided, however that:
 - in the case of dormitory buildings, the interval cannot exceed one year; and
 - in the case of all other multiple dwellings and nonresidential occupancies, the interval cannot exceed three years.

Inspections of one- and two-family dwellings. Fire and property maintenance inspections of one- and two-family dwellings 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. In reality, these 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 area of public assembly, 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 reinspections may be needed. A fair inspection policy consistently applied should be the goal of the local government.

11 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) 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 municipality 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 municipality needs to institute legal action to enforce code compliance or if a lawsuit is instituted against the municipality in connection with 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 and Records Administration (SARA) at the following address:

New York State Archives and Records Administration
Office of Cultural Education
Cultural Education Center
Empire State Plaza
Albany, NY 12230
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.

12 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 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 municipality. In fact, some supplemental features, such as procedures for notifying property owners of code violations, 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 municipality. 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 municipality 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. 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 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, injunctive relief from a justice of the Supreme Court pursuant to Executive Law §382(3) is available. 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 area of public assembly, 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.

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 NY 2d 341, 438 NYS 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 municipality 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 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 http://www.dos.ny.gov/DCEA/part_1203_Locallaw.html 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.