RULE TEXT

(Part 1202)

Part 1202 of Title 19 of the NYCRR is repealed and a new Part 1202 is added to read as follows:

Part 1202 Uniform Code and Energy Code: Administration and Enforcement by the State in Certain Local Governments

Section 1202.1 Introduction.

(a) In general, local governments are charged with the administration and enforcement of the Uniform Code and the Energy Code. However, a local government has the option to decline that responsibility by adopting a local law to that effect, in which event the responsibility passes to the respective county. Counties are accorded a similar option. If a local government and a county each exercise their option, the statute provides for administration and enforcement of the Uniform Code and Energy Code by the Secretary of State in the place and stead of the local government. Certain other events may also result in the administration and enforcement of both the Uniform Code and Energy Code by the Secretary of State. This Part establishes the procedures applicable in the circumstances in which the Secretary of State, through the Department of State (the Department), will administer and enforce the Uniform Code and Energy Code in the place and stead of a local government or county.

(b) Where the Department is responsible for administration and enforcement of the Uniform Code and Energy Code, it shall exercise its powers in a due and proper manner to extend to the public protection from the hazards of fire and inadequate building construction, and to further the purposes of Article 11 of the Energy Law.

(c) Subject to the provisions of section 1203.2 (e) of Part 1203 of this Title, the Department may contract directly with an individual or business entity to perform "building safety inspector enforcement activities" or "code enforcement official enforcement activities" (as those terms are defined in Part 1208 of this

Title) on behalf of the Department. Where the use of such services is in addition to services provided by the Department, the owner shall pay the associated fee prescribed by this Part, including but not limited to the fee associated with the third-party services.

Section 1202.2 Definitions.

(a) Unless otherwise expressly stated, for the purposes of this Part, the following terms shall be deemed to have the meanings set forth in section 1203.1 of Part 1203 of this Title:

(1) Assembly area

(2) Authority having jurisdiction

(3) Building permit

(4) Certificate of compliance

(5) Certificate of occupancy

(6) Codes

(7) Energy Code

(8) FCNYS

(9) Fire safety and property maintenance inspection

(10) Hazardous production materials

(11) Mobile food preparation vehicle

(12) PMCNYS

(13) RCNYS

(14) Repair

(15) Sugarhouse

(16) Uniform Code

(b) In addition to Section 1202.2 (a), unless otherwise expressly stated, for the purposes of this Part, the following terms shall be deemed to have the meaning shown in this subdivision:

(1) Department. The New York State Department of State, which includes both employees of the Department and those authorized according to section 1202.1 (c) of this Part.

(2) Owner. Any person or entity, or duly authorized representative of said person or entity, that meets any of the following:

(i) has any legal or equitable interest in the building or structure; or

(ii) is recorded in the official records of the state, county, or municipality as holding an interest or title to the building or structure; or

(iii) has possession or control of the building or structure, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Section 1202.3 Building permits.

(a) Except as provided for in section 1202.3 (b) of this Part, a building permit shall be required for any work which must conform to the Codes. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Department.

(b) No building permit shall be required for the categories of work listed below; however, an exemption from the requirement to obtain a building permit shall not be deemed an authorization for work to be performed in violation of the Codes:

(1) 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;

(2) construction of temporary sets and scenery associated with motion picture, television, and theater uses;

(3) installation of window awnings supported by an exterior wall of a one-or two-family dwelling or multiple single-family dwellings (townhouses);

(4) installation of partitions or movable cases less than 5′-9″ in height;

(5) painting, wallpapering, tiling, carpeting, or other similar finish work;

(6) installation of listed portable electrical, plumbing, heating, ventilation, or cooling equipment or appliances;

(7) 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

(8) repairs, provided that the work does not have an impact on fire and life safety, such as:

(i) any part of the structural system;

(ii) the required means of egress; or

(iii) the fire protection system or the removal from service of any part of the fire protection system for any period of time.

(c) Applications for a building permit may be obtained from the Department. The application shall be signed by the owner of the building or structure and the owner of the real property, if different than the owner of building or structure, where the work is to be performed. The building permit application shall include the following information and documentation:

(1) a description of the location, nature, extent, and scope of the proposed work;

(2) the tax map number and the street address of any affected building or structure;

(3) the occupancy classification of any affected building or structure;

(4) where applicable, a statement of special inspections to be prepared in accordance with the provisions of the Uniform Code;

(5) construction documents (drawings and/or specifications), prepared in compliance with section 1202.3 (d) of this Part;

(6) any additional submittal documents in the format and quantity acceptable to the Department as required by the applicable provisions of the Codes;

(7) the climatic and geographic design criteria as indicated in section 1202.12 of this Part; and

(8) any other information and documentation that the Department may deem necessary to allow the Department to determine that the proposed work conforms to the Codes.

(d) Construction documents submitted as part of a building permit application may be submitted in either electronic or hard copy format, on material suitable to the Department, and must be drawn to scale. The Department will not accept or approve construction documents unless they include sufficient detail showing that they contain the information and/or documentation required by the applicable provisions of either or both of the Codes, including but not limited to the following, where applicable:

(1) a description of the location, nature, extent, and scope of the proposed work;

(2) documentation showing that the proposed work will conform to the applicable provisions of the Codes;

(3) the location, construction, size, and character of all portions of the means of egress;

(4) a representation of the building thermal envelope;

(5) 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;

(6) the proposed structural, electrical, plumbing, mechanical, fire-protection, and other service systems of the building;

(7) a written statement indicating compliance with the Energy Code;

(8) 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;

(9) 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

(10) any other information and documentation that the Department may deem necessary to allow the Department to determine that the proposed work conforms to the Codes.

Construction documents that are accepted as part of the application for a building permit shall be marked as accepted by the Department in writing or by stamp, or in the case of electronic media, by an electronic marking. One set of the accepted construction documents shall be retained by the Department, and one set of the accepted construction documents shall be returned to the applicant to be kept at the worksite to be available for use by the Department. However, the return of a set of accepted construction documents 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.

(e) An application for a building permit shall be examined by the Department to ascertain whether the proposed work complies with the applicable requirements of the Codes. A building permit shall only be issued when the Department deems the building permit application to be complete and in compliance with the applicable provisions of this Part; the appropriate fees have been paid; and when the proposed work is determined to conform to the requirements of the Codes. The work authorized by such a building permit may include special conditions when the Department deems necessary.

(f) Building permits will be issued with specific effective and expiration dates, and the maximum period within which authorized work shall commence. A building permit shall become invalid if the authorized work is not commenced within the period specified by the Department.

(1) Building permits issued pursuant to this Part, except those issued for the purpose of demolition, shall expire 24 months from the effective date or upon the issuance of a certificate of occupancy (not including a temporary certificate of occupancy) or a certificate of compliance, whichever occurs first.

(2) A building permit issued for the purpose of demolition shall expire six months from the effective date or upon the issuance of a certificate of occupancy or certificate of compliance, whichever occurs first.

(3) Building permits issued pursuant to section 1202.3 (f)(1) of this Part may be renewed for successive periods of 12 months. Building permits issued pursuant to section 1202.3 (f)(2) of this Part may be renewed for successive periods of six months. A building permit may be renewed only when all of the following conditions are met:

(i) the relevant information in the building permit application is up-to-date;

(ii) the owner requests a renewal in writing; and

(iii) the building permit is not suspended or has not been revoked at the time the renewal request is made.

(g) When a building permit has been issued in error because of incorrect, inaccurate, or incomplete information, or the work for which the building permit was issued violates the Codes, the Department shall either revoke the building permit or issue a stop work order and suspend the building permit until the owner demonstrates to the satisfaction of the Department that all work completed, and all work proposed shall comply with applicable provisions of the Codes.

(h) Building permits are required to be visibly displayed at the worksite and must remain visible until the project has been completed.

(i) The fee(s) specified in or determined in accordance with section 1202.15 of this Part must be paid at the time of submission of a building permit application, amended building permit application, or renewed building permit application.

Section 1202.4 Construction inspections.

(a) Work for which a building permit has been issued under section 1202.3 of this Part shall be inspected by the Department. It shall be the responsibility of the owner to:

(1) ensure the work remains accessible and exposed until inspected and accepted by the Department;

(2) inform the Department that the work is ready for inspection; and

(3) coordinate with the Department to schedule such inspection.

In addition to those inspections noted in section 1202.4 (b) of this Part, the Department reserves the right to perform an inspection of the work that is the subject of a building permit at any time during the period the building permit is active in order to confirm the work is being performed in compliance with the Codes, and the information and construction documents approved with, and any conditions imposed by, the building permit.

(b) The elements of the construction process to be inspected by the Department shall include, where applicable, the following:

(1) worksite prior to the issuance of a building permit;

(2) footing and foundation;

(3) preparation for concrete slab;

(4) framing;

(5) structural, electrical, plumbing, mechanical, fire-protection, and other similar service systems of the building;

(6) fire resistant construction;

(7) fire resistant penetrations;

(8) solid fuel-burning heating appliances, chimneys, flues, or gas vents;

(9) inspections required to demonstrate 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;

(10) installation, connection, and assembly of factory manufactured buildings and manufactured homes; and

(11) a final inspection after all work authorized by the building permit has been completed.

(c) Remote inspections in lieu of in-person inspections may be performed when, at the discretion of the Department, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Department that the elements of the construction process conform with the applicable requirements of the Codes.

(d) After each inspection, the Department shall note the work, or a portion thereof to be satisfactory as completed, or the owner shall be notified as to the manner in which the work fails to comply with the Codes, including a citation to the specific code provision or provisions that have not been met. The owner shall be responsible for ensuring work not in compliance with any applicable provision of the Codes remains exposed until such work has been brought into compliance with all applicable provisions of the Codes, is reinspected by the Department, and is found satisfactory as completed.

(e) The fee(s), if any, specified in or determined in accordance with section 1202.15 of this Part must be paid prior to, or at the time of each inspection performed pursuant to this section.

Section 1202.5 Certificates of occupancy, certificates of compliance, and temporary certificates of occupancy.

(a) A certificate of occupancy or certificate of compliance shall be required for any completed work which is the subject of a building permit and for 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 certificate of compliance. A certificate of occupancy or certificate of compliance shall not be issued by the Department until the Department has:

(1) inspected the building, structure, or work and determined that the building, structure, or work complies with all applicable provisions of the Codes;

(2) where applicable, received and reviewed each written statement of structural observations and/or a final report of special inspections required by any applicable provisions of the Uniform Code and determined that the information in such written statement or report adequately demonstrates compliance with the applicable provisions of the Uniform Code;

(3) where applicable, received and reviewed flood hazard certifications required by any applicable provisions of the Uniform Code and determined that the information in such certifications adequately demonstrates compliance with the applicable provisions of the Uniform Code;

(4) where applicable, received and reviewed each written statement of the results of tests performed to show compliance with the Energy Code and determined that the information in such statements adequately demonstrates compliance with the applicable provisions of the Energy Code; and

(5) where applicable, verified the affixation of the appropriate seals, insignias, and manufacturers' data plates as required for factory manufactured buildings and/or manufactured homes.

(b) A certificate of occupancy or certificate of compliance shall contain the following information:

(1) the building permit number, if any;

(2) the date of issuance of the building permit, if any;

(3) the name, address, and tax map number of the property;

(4) if the certificate of occupancy or certificate of compliance does not apply to an entire structure, a description of that portion of the structure for which the certificate of occupancy or certificate of compliance is issued;

(5) the use and occupancy classification of the structure;

(6) the type of construction of the structure;

(7) the occupant load of the assembly areas in the structure, if any;

(8) any special conditions imposed in connection with the issuance of the building permit;

(9) the signature of the official issuing the certificate of occupancy or certificate of compliance; and

(10) the date of issuance of the certificate of occupancy or certificate of compliance.

(c) At the discretion of the Department, and upon written request of the owner, the Department shall have the authority to issue temporary certificates of occupancy in accordance with this subdivision.

(1) A temporary certificate of occupancy may be issued prior to the completion of the work that is the subject of a building permit, if the Department determines the following conditions have been met:

(i) the structure or portions thereof may be occupied safely;

(ii) any required fire and life safety components, such as fire protection equipment and fire, smoke, carbon monoxide, and heat detectors and alarms are installed and operational; and

(iii) all required means of egress from the structure have been provided.

(2) Temporary certificates of occupancy shall:

(i) include a specified period during which the owner shall undertake work to bring the structure into full compliance with applicable provisions of the Codes, not to exceed six months from the date of issuance;

(ii) specify the portion or portions of the building or structure that may be occupied pursuant to the temporary certificate of occupancy, and any special terms or conditions of such occupancy that the Department 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;

(iii) include the information identified in section 1202.5 (b) of this Part; and

(iv) be renewable for successive periods each not to exceed six months.

(3) It may be necessary for the Department to perform additional inspections at the expense of the owner of the building, structure, or work in order to determine that the building, structure, or work complies with section 1202.5 (c)(1)(i) through (iii) of this Part.

(d) A certificate of occupancy, certificate of compliance, or temporary certificate of occupancy issued in error or on the basis of incorrect information shall be suspended or revoked if the relevant error or information is not corrected within a period of time specified by the Department.

(e) The fee(s), if any, specified in or determined in accordance with section 1202.15 of this Part must be paid prior to, or at the time of each inspection performed or prior to the issuance of any certificate issued pursuant to this section.

Section 1202.6 Notification regarding fire or explosion.

In the event of any fire or explosion involving any structural damage, fuel-burning appliance, chimney, or gas vent where the building is owned by a village, town, city, or county; the owner shall promptly notify the Department of the event. For all other buildings, the chief of any fire department or other officer providing firefighting services shall promptly notify the Department.

Section 1202.7 Unsafe structures and equipment and conditions of imminent danger.

When the Department finds conditions of imminent danger and/or unsafe structures and equipment as outlined in the Uniform Code, the Department is authorized to take appropriate enforcement action to ensure the conditions are addressed, including but not limited to issuing an order to remedy, stop work order, or any other enforcement option available pursuant to this Part or other State or local law.

Section 1202.8 Operating permits.

(a) Except as provided for in section 1202.8 (b) of this Part, an operating permit shall be required prior to conducting any process or activity or for operating any type of building, structure, or facility listed below:

(1) manufacturing, storing, or handling hazardous materials in quantities exceeding those listed in the applicable Maximum Allowable Quantity tables found in Chapter 50 of the FCNYS;

(2) 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 in this paragraph as follows:

(i) Chapter 22, "Combustible Dust-Producing Operations." Facilities where the operation produces combustible dust;

(ii) Chapter 24, "Flammable Finishes." Operations utilizing flammable or combustible liquids, or the application of combustible powders regulated by Chapter 24 of the FCNYS;

(iii) Chapter 25, "Fruit and Crop Ripening." Operating a fruit- or crop-ripening facility or conducting a fruit-ripening process using ethylene gas;

(iv) 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;

(v) 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;

(vi) Chapter 32, "High-Piled Combustible Storage." High-piled combustible storage facilities with more than 500 square feet (including aisles) of high-piled storage;

(vii) 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;

(viii) 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;

(ix) Chapter 40, “Sugarhouse Alternative Activity Provisions.” Conducting an alternative activity at a sugarhouse;

(x) Chapter 56, “Explosives and Fireworks.” Possessing, manufacturing, storing, handling, selling, or using, explosives, fireworks, or other pyrotechnic special effects materials except for the outdoor use of sparkling devices as defined by Penal Law section 270;

(xi) Section 307, “Open Burning, Recreational Fires and Portable Outdoor Fireplaces.” Conducting open burning, not including recreational fires and portable outdoor fireplaces;

(xii) 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

(xiii) Section 319, “Mobile Food Preparation Vehicles.” Operating a mobile food preparation vehicle.

(*a*) The operating permit required by subparagraph (xiii) of this paragraph shall be in addition to, and not in lieu of, requirements imposed by the Vehicle and Traffic Law or other applicable federal, state, or local laws, statutes, rules, or regulations, including but not limited to requirements relating to periodic vehicle safety inspections, periodic vehicle emission testing, vehicle registration, insurance coverage, and licensing of vehicle operators.

(*b*) The operating permit required by subparagraph (xiii) of this paragraph shall be in addition to, and not in lieu of, any other permit or license that may be required by any other federal, state, or local law, statute, rule, or regulation to operate a mobile food preparation vehicle.

(*c*) No operating permit shall be construed as authorizing the operation of a mobile food preparation vehicle in any jurisdiction or location where such operation is prohibited by any other federal, state, or local law, statute, rule, or regulation.

(*d*) At the discretion of the Department, the Department may rely on an operating permit issued by any other governmental unit or agency authorized by section 1201.2 of Part 1201 of this Title for the operation of a mobile food preparation vehicle, provided, however, that the Department is satisfied that the operating permit was issued in compliance with the applicable provisions of the issuing governmental unit or agency, and meets the applicable requirements of this Part and the Uniform Code.

(3) 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 RCNYS.

(4) buildings containing one or more assembly areas;

(5) outdoor events where the planned attendance exceeds 1,000 persons;

(6) facilities that store, handle or use hazardous production materials;

(7) parking garages as defined in section 1202.11 of this Part; and

(8) buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by the Department.

(b) The processes, activities, or the operation of the buildings, structures, or facilities listed in section 1202.8 (a) of this Part, are exempt from the requirement for an operating permit provided that the processes, activities, or operation are expressly authorized by a certificate of occupancy or certificate of compliance, fire safety and property maintenance inspections are performed in accordance with section 1202.9 of this Part, and condition assessments are performed in compliance with section 1202.11 of this Part, as applicable. The Department may revoke or suspend such exemption and require operating permits, and/or take any other enforcement action, in the interest of public health, safety, and security.

(c) An application for an operating permit, or the reissue or renewal of an operating permit, shall be completed and submitted on a form prescribed by the Department; shall contain sufficient information to enable the Department to determine that quantities, materials, and activities conform to the requirements of the

Uniform Code, including any necessary tests or reports to verify conformance; and shall include the applicable fees specified or determined in accordance with section 1202.15 of this Part.

(d) The Department shall inspect the premises prior to the issuance, reissue, or renewal of an operating permit.

(1) Remote inspections in lieu of in-person inspections may be performed when, at the discretion of the Department, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Department that the premises conform with the applicable requirements of the Codes.

(2) After the inspection, the premises shall be noted as satisfactory and the operating permit shall be issued, or the owner shall be notified as to the manner in which the premises fails to comply with the Uniform Code or this Part, including a citation to the specific provision or provisions that have not been met. In the case of a premises failing to comply with the Uniform Code or this Part, the processes, activities, or the operation of the buildings, structures, or facilities that were the subject of the operating permit application shall not take place until the owner corrects, in a manner approved by the Department, the issues noted as having failed the inspection, and a new inspection is performed by the Department and an operating permit issued.

(e) In any circumstance in which more than one activity listed in section 1202.8 (a) of this Part is to be conducted at a location, the Department may require a separate operating permit for each such activity, or the Department may, at its discretion, issue a single operating permit to apply to all such activities.

(f) Operating permits will remain in effect until they expire or are reissued, renewed, or revoked, and shall be effective for the following intervals:

(1) 180 days for tents, special event structures, and other membrane structures;

(2) 60 days for alternative activities at a sugarhouse; and

(3) one year for all other activities, structures, and operations.

(g) The effective period of each operating permit shall be specified on the operating permit. An operating permit may be reissued or renewed upon application to the Department.

(h) The Department shall revoke or suspend operating permits where a process or activity, or the operation of any type of building, structure, or facility does not comply with applicable provisions of the Uniform Code.

(i) The fee(s) specified in or determined in accordance with section 1202.15 of this Part shall be paid at the time of submission of an application for an operating permit, application to amend an operating permit, or application to reissue or renew an operating permit.

Section 1202.9 Fire safety and property maintenance inspections.

(a) Fire safety and property maintenance inspections are required, except as noted in section 1202.9 (b) of this Part, and shall be conducted by the Department at the following intervals:

(1) one year for buildings which contain an assembly area;

(2) 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

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

(b) Nothing in this subdivision shall require or be construed to require regular, periodic inspections of owner-occupied one and two-family dwellings and associated accessory structures; or 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.

(c) Remote inspections in lieu of in-person inspections may be performed when, at the discretion of the Department, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows, to the satisfaction of the Department, that the premises conform with the applicable requirements of the Codes.

(d) In addition to the inspections required by subdivision (a) of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be

performed by the Department at any time upon the request of the owner to be inspected; provided, however, that nothing in this subdivision shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

(e) After the inspection, the premises shall be noted as satisfactory, or the owner shall be notified as to the manner in which the premises fails to comply with the Uniform Code and this Part, as applicable, including a citation to the specific provision or provisions that have not been met. The owner shall be responsible for correcting the deficiencies noted within the timeframes established, including obtaining any necessary permits to perform the work. The owner shall notify the Department when the premises is ready for re-inspection, and the Department will then perform another fire safety and property maintenance inspection as necessary.

(f) At the discretion of the Department, the Department may accept an inspection of a building referred to in section 1202.9 (a)(2) of this Part performed by the Office of Fire Prevention and Control or other authorized entity pursuant to sections 807-a and 807-b of the Education Law and/or section 156-e of the Executive Law, in lieu of an inspection performed by the Department provided that:

(1) the Department is satisfied that the individual performing the inspection has met the requirements of Part 1208 of this Title applicable to either building safety inspectors or code enforcement officials (as those terms are defined in Part 1208 of this Title);

(2) the Department is satisfied that such inspection covers all elements required to be covered by a fire safety and property maintenance inspection;

(3) such inspections are performed no less frequently than once a year;

(4) a true and complete copy of the report of each such inspection is provided to the Department following the inspection; and

(5) upon receipt of each such report, the Department shall take the appropriate action prescribed by section 1202.9 (e) of this Part or verifies the authorized entity performing the inspection has taken the appropriate action consistent with section 1202.9 (e) of this Part.

(g) The fee(s) specified in or determined in accordance with section 1202.15 of this Part must be paid prior to or at the time of each inspection performed by the Department.

Section 1202.10 Complaints.

(a) The Department shall address bona fide complaints which assert that buildings, structures, conditions, and/or activities regulated by this Part, fail to comply with the Codes. Upon receipt by the Department of any information giving rise to reasonable cause to believe that conditions or activities fail to comply with the Codes; the Department shall take the following steps as the Department deems appropriate:

(1) investigate and/or perform an inspection of the premises, buildings, structures, conditions, and/or activities alleged to be in violation;

(2) if a violation is found to exist, the Department shall take any appropriate enforcement action as allowed by section 1202.14 of this Part;

(3) if a violation that was found to exist is abated or corrected, the Department shall perform an inspection to verify that the violation has been abated or corrected.

(b) Nothing in this subdivision shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

(c) Remote inspections in lieu of in-person inspections may be performed when, at the discretion of the Department, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Department that the buildings, structures, conditions, and/or activities inspected comply with the applicable requirements of the Codes.

Section 1202.11 Condition assessments of parking garages.

(a) For the purposes of section 1202.11 of this Part, the following terms shall be deemed to have the meanings shown in section 1203.3 (j)(2) of Part 1203 of this Title:

(1) Condition assessment

(2) Deterioration

(3) Parking garage

(4) Professional engineer

(5) Responsible professional engineer

(6) Unsafe condition

(7) Unsafe structure

(b) Parking garages shall be subject to condition assessments in accordance with this subdivision.

(1) Condition assessments – general requirements. The owner of each parking garage shall cause such parking garage to undergo an initial condition assessment as described in section 1202.11 (b)(2) of this Part, periodic condition assessments as described in section 1202.11 (b)(3) of this Part, and such additional condition assessments as may be required under section 1202.11 (b)(3) of this Part. Each condition assessment shall be conducted by or under the direct supervision of a responsible professional engineer. A written report of each condition assessment shall be prepared, and provided to the Department, in accordance with the requirements of section 1202.11 (b)(5) of this Part. 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.

(2) 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 that have not had an initial condition assessment performed shall immediately undergo an initial condition assessment.

(3) 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 three years.

(4) 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 section 1202.11 (b)(3) of this Part, the Department shall require the owner 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 Department becomes aware of any new or increased deterioration which, in the judgment of the Department, indicates that an additional condition assessment of the entire parking garage, or 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 section 1202.11 (b)(3) of this Part, the Department shall require the owner 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 Department to be appropriate.

(5) 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 Department within 60 days of performing any condition assessment, unless an extension is requested in writing and approved by the Department. In cases of deterioration or conditions resulting in a recommendation of immediate action, or identification of unsafe conditions, the Department shall be notified in writing immediately. 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 they 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 their professional judgment.

(6) The Department shall review each condition assessment report and 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 Department shall, by order to remedy or such other means of enforcement as the Department may deem appropriate, require the owner 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 section 1202.11 (b)(5)(ii) and section 1202.11 (b)(5)(iii) of this Part. All repairs

and remedies shall comply with the applicable provisions of the Uniform Code. Neither this paragraph nor the provisions of this section shall limit or impair the right of the Department to take any other enforcement action, including but not limited to placing a do not occupy order or 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.

(7) The Department 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 Department with a written statement attesting to the fact that they have been so engaged, the Department shall make the previously prepared condition assessment reports for such parking garage (or copies of such reports) available to such professional engineer. Any expense incurred by the Department associated with making such previously prepared condition assessment reports (or copies thereof) available to the professional engineer shall be paid to the Department by the owner, or the professional engineer.

(8) This section shall not limit or impair the right or the obligation of the Department:

(i) to perform such construction inspections as are authorized by section 1202.4 of this Part;

(ii) to perform such inspections as are authorized by section 1202.8 of this Part;

(iii) to perform such periodic fire safety and property maintenance inspections as are authorized by section 1202.9 of this Part; or

(iv) 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 Department 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.

(9) 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.

Section 1202.12 Climatic and geographic design criteria.

(a) Included with any building permit application, the owner shall be responsible for providing the Department with the climatic and geographic design criteria required by the Uniform Code as established by the city, town, or village in which the building or structure is located. This includes, but is not limited to:

(1) ground snow load; wind design loads; seismic design 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) heating and cooling equipment design criteria for structures within the scope of the RCNYS, including but not limited to the design criteria identified in the Design Criteria Table found in Chapter 3 of the RCNYS; and

(3) the relevant information 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.

(b) Where the climatic and geographic design criteria have not been established by the city, town, or village where the building or structure is located, the owner shall be responsible for providing the necessary information to the Department as established by a registered architect, licensed and registered in accordance with Article 147 of the New York State Education Law, or a professional engineer, licensed and registered in accordance with Article 145 of the New York State Education Law.

Section 1202.13 Recordkeeping.

(a) The Department shall keep permanent official records of all transactions and activities conducted by the Department and specified in this Part, including but not limited to:

(1) all written authorizations of authorized representatives of the Owner(s) in accordance with section 1202.2 (b)(2) of this Part;

(2) all applications and written requests from an owner received, reviewed, and approved or denied;

(3) all plans, specifications, and construction documents approved;

(4) all building permits, certificates of occupancy, certificates of compliance, temporary certificates, stop work orders, and operating permits issued;

(5) all inspections and tests performed;

(6) all statements and reports issued;

(7) all complaints received;

(8) all investigations conducted;

(9) all condition assessment reports received;

(10) all fees charged and collected; and

(11) all other features and activities specified in or contemplated by this Part.

(b) All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum period so required by State law and regulation.

Section 1202.14 Orders and violations.

(a) The Department is authorized to issue the following types of orders in writing:

(1) order to remedy, where any condition is in violation of the Codes or this Part existing in, on, or about any building or structure shall be corrected within a specified period of time;

(2) order not to be occupied, where a building or structure constructed or maintained in violation of the Codes or this Part shall not be occupied; and

(3) order to stop work until the Department is satisfied that such violation has been or will be corrected, including but not limited to:

(i) any work that is determined by the Department to be contrary to any applicable provision of the Codes, without regard to whether such work requires a building permit, or a building permit has been issued;

(ii) any work subject to either or both Codes that is being conducted in a dangerous or unsafe manner in the opinion of the Department; or

(iii) any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.

(b) An order to remedy shall be in writing; shall be dated and signed by the Department; shall specify the condition or activity that violates the Codes or this Part; shall specify the provision or provisions of the Codes or this Part which is/are violated by the specified condition or activity; and shall include a statement substantially similar to the following: "The person or entity served with this Order to Remedy must completely remedy each violation described in this Order to Remedy by _____ [specify date], which is thirty (30) days after the date of this Order to Remedy." Orders to remedy shall be served in person upon an owner, or sent by certified or registered mail to the address of the owner, within five (5) days after the date of the order to remedy. Compliance with an order to remedy requires that each violation described in the order to remedy be corrected within the required timeframe provided.

(c) Orders not to be occupied shall be served in person upon the owner, or sent by certified or registered mail to the address of the owner, or by posting such order in a conspicuous spot upon the building or structure which is the subject of such order. When a not to be occupied order has been issued by the department, except for the purpose of inspecting or securing the building or structure, no building or structure which is the subject of such an order shall be occupied until such order is rescinded or unless the occupancy is specifically approved in writing by the Department.

(d) Stop work orders shall be served in person upon the owner, or sent by certified or registered mail to the address of the owner, or by posting such order in a conspicuous spot upon the building or structure which is the subject of such order. Stop work orders shall be dated and signed by the Department, state the reason or reasons for issuance, and state the conditions which must be satisfied before work will be allowed to resume.

When a stop work order has been issued, no work other than work approved by the Department to correct the reason for issuing the stop work order, shall proceed until the stop work order has been rescinded in writing by the Department, or the Department deems the reason and conditions stated in the stop work order as being satisfied in writing by the Department. The issuance of a stop work order shall not be the exclusive remedy available to address any event described in section 1202.14 (a)(3) of this Part, and the authority to issue a stop work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under section 1202.14 of this Part, or under any other applicable local law or State law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop work order.

(e) Failure to comply with any order issued by the Department shall be subject to a penalty as provided by law.

Section 1202.15 Fees.

The Department of State Administration and Enforcement Fee Schedule (publication date: August 2022) published by the Department is incorporated herein by reference. Copies of the Department of State Administration and Enforcement Fee Schedule (publication date: August 2022) may be obtained from the Department of State and is available on the Department's website and for public inspection and copying at the following address:

New York State Department of State

One Commerce Plaza, 99 Washington Avenue

Albany, NY 12231-0001.