

## **RULE TEXT**

### **(19 NYCRR Part 1203)**

**Part 1203 of Title 19 of the NYCRR is repealed and a new Part 1203 is added to read as follows:**

#### **Part 1203 Uniform Code and the Energy Code: Minimum Standards for Administration and Enforcement**

##### **Section 1203.1 Introduction and definitions.**

(a) Introduction. Section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations for administration of the New York State Uniform Fire Prevention and Building Code and the New York State Energy Conservation Construction Code.

(b) Definitions. Unless otherwise expressly stated, for the purposes of this Part, the following terms shall be deemed to have the meanings shown in this subdivision:

(1) Assembly area. An area in any building, or in any portion of a building, that is primarily used or intended to be used for gathering fifty or more persons for uses including, but not limited to, amusement, athletic, entertainment, social, or other recreational functions; patriotic, political, civic, educational, or religious functions; food or drink consumption; awaiting transportation; or similar purposes.

(2) Authority having jurisdiction. Any city, town, village, county, state agency, or other governmental unit or agency responsible for administration and enforcement of either or both of the Codes.

(3) Building permit. A building permit, construction permit, demolition permit, or other permit that authorizes the performance of work.

(4) Certificate of compliance. A document issued by the authority having jurisdiction stating that work was done in compliance with approved construction documents and the Codes.

(5) Certificate of occupancy. A document issued by the authority having jurisdiction certifying that the building or structure, or portion thereof, complies with the approved construction documents that have been submitted to, and approved by the authority having jurisdiction, and indicating that the building or structure, or portion thereof, is in a condition suitable for occupancy.

(6) Codes. The Uniform Code and Energy Code.

(7) Energy Code. The New York State Energy Conservation Construction Code, Subchapter B of Chapter XXXIII of this Title, adopted pursuant to Article 11 of the Energy Law.

(8) FCNYS. The 2020 Fire Code of New York State as currently incorporated by reference in Part 1225 of this Title.

(9) Fire safety and property maintenance inspection. An inspection performed to determine compliance with the applicable provisions of Part 1225 of this Title and the publications incorporated therein by reference and the applicable provisions of Part 1226 of this Title and the publications incorporated therein by reference.

(10) Hazardous production materials. A solid, liquid, or gas associated with semiconductor manufacturing that has a degree-of-hazard rating in health, flammability, or instability of Class 3 or 4, as ranked by NFPA 704 (Standard Systems for Identification of the Hazards of Materials for Emergency Response), and which is used directly in research, laboratory, or production processes which have, as their end product, materials that are not hazardous.

(11) Mobile food preparation vehicles. Vehicles that contain cooking equipment that produces smoke or grease-laden vapors for the purpose of preparing and serving food to the public. Vehicles intended for private recreation shall not be considered mobile food preparation vehicles.

(12) PMCNYS. The 2020 Property Maintenance Code of New York State as currently incorporated by reference in Part 1226 of this Title.

(13) RCNYS. The 2020 Residential Code of New York State as currently incorporated by reference in Part 1220 of this Title.

(14) Repair. The reconstruction, replacement, or renewal of any part of an existing building for the purpose of its maintenance or to correct damage.

(15) Sugarhouse. A building used, in whole or in part, for the collection, storage, or processing of maple sap into maple syrup and/or maple sugar.

(16) Uniform Code. The New York State Uniform Fire Prevention and Building Code, Subchapter A of Chapter XXXIII of this Title, adopted pursuant to Article 18 of the Executive Law.

### **Section 1203.2 Program for administration and enforcement.**

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

(b) Where the State is responsible under section 1201.2 (d) of Part 1201 of this Title for administration and enforcement of the Uniform Code, the state agency or agencies determined in accordance with the provisions of Part 1204 of this Title shall administer and enforce the Codes in accordance with Part 1204 of this Title and section 1203.3 (j) of this Part. For the purposes of section 1203.3 (j)(5) of this Part, the period fixed by the code enforcement program of such state agency, as the interval between periodic condition assessments, shall not exceed three years.

(c) Every state agency responsible under section 1201.2 of this Title for administration and enforcement of the Uniform Code and not otherwise included in subdivisions (a) and (b) of this section shall provide for administration and enforcement of the Codes in regulation. Any such regulation shall include the features described in section 1203.3 of this Part.

(d) Every authority having jurisdiction responsible for administration and enforcement of the Uniform Code shall exercise its powers in due and proper manner so as to extend to all people of the State protection from the hazards of fire and inadequate building construction. Every authority having jurisdiction responsible for administration and enforcement of the Energy Code shall exercise its powers in due and proper manner so as to further the purposes of Article 11 of the Energy Law, as applicable.

(e) An authority having jurisdiction 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 authority having jurisdiction, subject to the following conditions:

(1) Where an authority having jurisdiction contracts directly with an individual or a business entity to perform any building safety inspector enforcement activities on behalf of such authority having jurisdiction, the authority having jurisdiction shall satisfy itself that each individual performing such contracted-for building safety inspector enforcement activities has qualifications comparable to those of a person who has met the requirements of Part 1208 of this Title applicable to building safety inspectors.

(2) Where an authority having jurisdiction contracts directly with an individual or a business entity to perform any code enforcement official enforcement activities on behalf of such authority having jurisdiction, the authority having jurisdiction shall satisfy itself that each individual performing such contracted-for code enforcement official enforcement activities has qualifications comparable to those of a person who has met the requirements of Part 1208 of this Title applicable to code enforcement officials.

(3) No agreement shall be made by which building permits, certificates of occupancy, temporary certificates of occupancy, certificates of compliance, orders, appearance tickets, or other similar documents related to administration and enforcement of either or both of the Codes are issued by other than public officers of the authority having jurisdiction.

(4) “Special inspections” (as defined in the Uniform Code), including but not limited to, electrical inspections, elevator inspections, welding inspections, and smoke control system inspections are not considered to be building safety inspector enforcement activities or code enforcement official enforcement activities (as defined in Part 1208 of this Title). Accordingly, a special inspector performing a special inspection is not performing a building safety inspector enforcement activity or a code enforcement official enforcement activity and is not required to have qualifications comparable to those of a person who has met the requirements of Part 1208 of this Title. However, an authority having jurisdiction shall not accept or rely upon a special inspection unless the person performing such special inspection

(i) is a qualified person employed or retained by an agency that has been approved by the authority having jurisdiction and

(ii) has been approved by the authority having jurisdiction as having the competence necessary to inspect a particular type of construction requiring such special inspection.

(f) The persons, offices, departments, agencies, or combinations thereof, authorized and responsible for administration and enforcement of either or both of the Codes, or any portion thereof, shall be clearly identified.

### **Section 1203.3 Minimum features of a program for administration and enforcement.**

A program for administration and enforcement of either or both of the Codes shall include all features and provisions described in this section 1203.3. Each authority having jurisdiction must provide for each of the listed features through local law, ordinance, or appropriate regulation. Such authority having jurisdiction may

adopt provisions for administration and enforcement that are more stringent than the minimum standards set forth in this section.

(a) Building permits.

(1) Each authority having jurisdiction shall include in its code enforcement program provisions requiring building permits to be required for work that must conform to either or both of the Codes. Where expressly set forth in their code enforcement program, an authority having jurisdiction may exempt from the requirement for a building permit any one or more of the categories of work listed in section 1203.3 (a)(1)(i) through (viii). An exemption from the requirement to obtain a building permit shall not be deemed an authorization for work to be performed in violation of either or both of the Codes. The following categories of work may be exempted from the requirement for a building permit:

(i) 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;

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

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

(iv) installation of partitions or movable cases less than 5'-9" in height;

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

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

(vii) 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

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

(a) any part of the structural system;

(b) the required means of egress; or

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

(2) Each authority having jurisdiction shall include in its code enforcement program provisions requiring an application for a building permit, or an amendment thereto, to include information sufficient to enable the authority having jurisdiction to determine that the intended work accords with the requirements of the Codes. An application for a building permit shall include, but not be limited to, the following information and documentation:

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

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

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

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

(v) construction documents (drawings and/or specifications), in the format and quantity acceptable to the authority having jurisdiction, prepared in compliance with section 1203.3 (a)(3);

(vi) any additional submittal documents in the format and quantity acceptable to the authority having jurisdiction as required by the applicable provisions of the Codes;

(vii) any other information and documentation that the authority having jurisdiction may deem necessary to allow the authority having jurisdiction to determine that the proposed work conforms to the Codes.

(3) Each authority having jurisdiction shall include in its code enforcement program provisions requiring construction documents submitted as part of an application for a building permit to be drawn to scale on suitable

material or in electronic media. The authority having jurisdiction shall not approve required construction documents unless they show in sufficient detail that they contain the information and/or documentation required by the applicable provisions of either or both of the Codes, and including but not limited to the following, where applicable:

- (i) describing the location, nature, extent, and scope of the proposed work;
- (ii) showing that the proposed work will conform to the applicable provisions of the Codes;
- (iii) showing the location, construction, size, and character of all portions of the means of egress;
- (iv) showing a representation of the building thermal envelope;
- (v) showing structural information including but not limited to braced wall designs; the size, section, and relative locations of structural members; design loads; and other pertinent structural information;
- (vi) showing the proposed structural, electrical, plumbing, mechanical, fire-protection, and other service systems of the building;
- (vii) a written statement indicating compliance with the Energy Code;
- (viii) 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;
- (ix) 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

(x) include any other information and documentation that the authority having jurisdiction may deem necessary to allow the authority having jurisdiction to determine that the proposed work conforms to the Codes.

(4) Each authority having jurisdiction shall include in its code enforcement program provisions requiring the authority having jurisdiction, or an individual or entity contracted by the authority having jurisdiction and satisfying the requirements set forth in section 1203.2 (e)(2), to examine applications for a building permit or for an amendment thereto to ascertain whether the proposed work is in conformance with the requirements of the Codes. Construction documents and any other submittal documents approved as part of a building permit application shall be so marked in writing and by stamp, or in the case of electronic media, an electronic marking. One complete set of approved construction documents and other submittal documents shall be retained by the authority having jurisdiction. One complete set shall be returned to the applicant to be available at the work site for use by the authorized representatives of the authority having jurisdiction.

(5) Each authority having jurisdiction shall include in its code enforcement program provisions requiring building permits to contain a statement indicating that all work shall be performed in accordance with the approved building permit application including any supporting information and documentation, such as construction documents, written statements, submittal documents, etc. In addition, a building permit shall include a directive indicating that the building permit holder must notify the authority having jurisdiction immediately in the event of changes occurring during construction.

(6) Each authority having jurisdiction shall include in its code enforcement program provisions requiring building permits to be issued with a specific expiration date. The authority having jurisdiction may provide that

a building permit shall become invalid unless the work authorized is commenced within a specified period following issuance.

(7) Each authority having jurisdiction shall include in its code enforcement program provisions requiring that 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 either or both of the Codes, such building permit shall be revoked or suspended until such time as the building permit holder demonstrates that all work completed and all work proposed shall be in compliance with applicable provisions of the Codes.

(8) Each authority having jurisdiction shall include in its code enforcement program provisions requiring building permits to be visibly displayed at the worksite and to remain visible until the project has been completed.

(b) Construction inspections.

(1) Each authority having jurisdiction shall include in its code enforcement program provisions requiring the authority having jurisdiction, or an individual or entity contracted by the authority having jurisdiction and satisfying the requirements set forth in section 1203.2 (e)(2), to perform construction inspections required by the Codes including those listed in this paragraph, either in-person or remotely. Remote inspections in lieu of in-person inspections may be performed when, at the discretion of the authority having jurisdiction, 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 authority having jurisdiction that the elements of the construction process conform with the applicable requirements of the Codes. Should a remote inspection not afford the authority having jurisdiction sufficient information to make a determination, an in-person inspection shall be performed. Inspections shall include but not be limited to the following elements of the construction process, where applicable:

(i) worksite prior to the issuance of a permit;

(ii) footing and foundation;

(iii) preparation for concrete slab;

(iv) framing;

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

(vi) fire resistant construction;

(vii) fire resistant penetrations;

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

(ix) 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;

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

and

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

(2) Each authority having jurisdiction shall include in its code enforcement program provisions requiring work for which a permit has been issued to remain accessible and exposed until inspected and accepted by the authority having jurisdiction and requiring building permit holders to notify the authority having jurisdiction when construction work is ready for inspection.

(3) Each authority having jurisdiction shall include in its code enforcement program provisions requiring that after each inspection, the authority having jurisdiction shall note the work or a portion thereof to be satisfactory as completed, or the building permit holder shall be notified as to the manner in which the work fails to comply with either or both of the Codes, including a citation to the specific code provision or provisions

that have not been met. The code enforcement program shall also include provisions requiring work not in compliance with applicable provisions of either or both of the Codes to remain exposed until it has been brought into compliance with the Codes, re-inspected, and found satisfactory as completed.

(c) Stop work orders.

Each authority having jurisdiction shall include in its code enforcement program provisions for the authority having jurisdiction to issue stop work orders to halt work that is determined to be contrary to provisions of either or both of the Codes, is being conducted in a dangerous or unsafe manner, is being performed without obtaining a required building permit, or when a building permit has been issued in error. A stop work order shall state the reason for its issuance and the conditions which must be satisfied before work will be allowed to resume.

(d) Certificates of occupancy, certificates of compliance, and temporary certificates of occupancy.

(1) Each authority having jurisdiction shall include in its code enforcement program provisions for the authority having jurisdiction to issue a certificate of occupancy or a certificate of compliance for any work which is the subject of a building permit and required to comply with either or both of the codes and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. The code enforcement program shall provide that, except as provided in section 1203.3 (d)(4), permission to use or occupy a building or structure, or portion thereof, for which a building permit was previously issued, or which has been converted from one use or occupancy classification or subclassification to another, shall be granted only by issuance of a certificate of occupancy or a certificate of compliance.

(2) Each authority having jurisdiction shall include in its code enforcement program a provision that precludes the authority having jurisdiction from issuing a certificate of occupancy or a certificate of compliance until the authority having jurisdiction shall have:

(i) inspected the building, structure, or work and determined that the building, structure, or work is in compliance with all applicable provisions of the Codes;

(ii) 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 provision of the Uniform Code;

(iii) 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 provision of the Uniform Code;

(iv) 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 provision of the Energy Code; and

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

(3) Each authority having jurisdiction shall include in its code enforcement program provisions requiring a certificate of occupancy or certificate of compliance to contain the following information:

(i) the building permit number, if any;

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

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

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

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

- (vi) the type of construction of the structure;
- (vii) the occupant load of the assembly areas in the structure, if any;
- (viii) any special conditions imposed in connection with the issuance of the building permit;
- (ix) the signature of the official issuing the certificate of occupancy or certificate of compliance; and
- (x) the date of issuance of the certificate of occupancy or certificate of compliance.

(4) Each authority having jurisdiction shall include in its code enforcement program provisions allowing the authority having jurisdiction to issue a temporary certificate of occupancy prior to the completion of the work that is the subject of a building permit. The code enforcement program shall provide that:

(i) A temporary certificate of occupancy shall be limited to a specified period of time during which the building permit holder shall undertake to bring the structure into full compliance with applicable provisions of the Codes.

(ii) The temporary certificate of occupancy shall 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 authority having jurisdiction may deem to be appropriate to ensure the health and safety of the persons occupying and using the building or structure and/or performing further construction work in the building or structure.

(iii) The temporary certificate of occupancy shall also include the information mentioned in section 1203.3 (d)(3).

(iv) An authority having jurisdiction shall not issue a temporary certificate of occupancy until it determines that the following conditions are met:

- (a) the structure or portions thereof may be occupied safely;
- (b) 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

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

(5) Each authority having jurisdiction shall include in its code enforcement program provisions requiring a certificate of occupancy, certificate of compliance, or temporary certificate of occupancy issued in error or on the basis of incorrect information to be suspended or revoked by the authority having jurisdiction if the relevant deficiencies are not corrected within a specified period of time.

(e) Notification regarding fire or explosion.

Each authority having jurisdiction shall include in its code enforcement program procedures for the chief of any fire department providing firefighting services for a property to notify the authority having jurisdiction of any fire or explosion involving any structural damage, fuel-burning appliance, chimney or gas vent.

(f) Unsafe structures and equipment and conditions of imminent danger.

Each authority having jurisdiction shall include in its code enforcement program procedures for the authority having jurisdiction to identify and address unsafe structures and equipment and conditions of imminent danger consistent with the requirements of the Uniform Code.

(g) Operating permits.

(1) Each authority having jurisdiction shall include in its code enforcement program provisions requiring operating permits for conducting any process or activity or for operating any type of building, structure, or facility listed in this paragraph as follows:

(i) 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;

(ii) 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 section 1203.3 (g)(1)(ii) as follows:

(a) Chapter 22, “Combustible Dust-Producing Operations.” Facilities where the operation produces combustible dust;

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

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

(d) 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;

(e) 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;

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

(g) 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;

(h) 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;

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



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

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

(l) 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

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

(iii) 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.

(iv) buildings containing one or more assembly areas;

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

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

(vii) parking garages as defined in section 1203.3 (j);

(viii) buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by the authority having jurisdiction; and

(ix) other processes or activities or for operating any type of building, structure, or facility at the discretion of the authority having jurisdiction.

(2) Where specifically identified in their code enforcement program, an authority having jurisdiction may exempt from the requirement for an operating permit the processes or activities, or the buildings, structures, or facilities listed in section 1203.3 (g)(1), provided that the use is expressly authorized by a certificate of occupancy or certificate of compliance, fire safety and property maintenance inspections are performed in accordance with section 1203.3 (h), and condition assessments are performed in compliance with

section 1203.3 (j), as applicable. Neither this paragraph nor the provisions of the code enforcement program of the authority having jurisdiction that implement this paragraph shall limit or impair the right of the authority having jurisdiction to take any other enforcement action, including but not limited to those specified in section 1203.5 of this Part, as may be necessary or appropriate in response to any citation of non-compliance found during a fire safety and property maintenance inspection.

(3) Each authority having jurisdiction shall include in its code enforcement program provisions requiring parties who propose to undertake the types of activities or operate the types of buildings listed in section 1203.3 (g)(1), and not otherwise exempted by section 1203.3 (g)(2), to obtain an operating permit prior to commencing such activity or operation. The code enforcement program shall also include provisions requiring an application for an operating permit to contain sufficient information to enable a determination that quantities, materials, and activities conform to the requirements of the Uniform Code. Tests or reports necessary to verify conformance shall be required.

(4) Each authority having jurisdiction shall include in its code enforcement program provisions requiring the authority having jurisdiction, or an individual or entity contracted by the authority having jurisdiction and satisfying the requirements set forth in section 1203.2 (e)(2), to perform an inspection of the premises prior to the issuance or renewal of an operating permit. Such inspections shall be performed either in-person or remotely. Remote inspections in lieu of in-person inspections may be performed when, at the discretion of the authority having jurisdiction, 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 authority having jurisdiction that the premises conform with the applicable requirements of the Uniform Code and the code enforcement program. Should a remote inspection not afford the authority having jurisdiction sufficient information to make a determination, an in-person inspection shall be performed. After inspection, the premises shall be noted as satisfactory and the operating permit shall be issued, or the operating permit holder shall be notified as to the

manner in which the premises fails to comply with either or both of the Uniform Code and the code enforcement program, including a citation to the specific provision or provisions that have not been met.

(5) Where specifically identified in their code enforcement program, an authority having jurisdiction may allow a single operating permit to apply to more than one hazardous activity.

(6) Each authority having jurisdiction shall include in its code enforcement program provisions for operating permits to remain in effect until reissued, renewed, or revoked and shall be issued for a specified period of time consistent with local conditions, but in no event to exceed:

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

(ii) 60 days for alternative activities at a sugarhouse;

(iii) three years for the activities, structures, and operations determined per section 1203.3 (g)(1)(ix), and

(iv) one year for all other activities, structures, and operations identified in section 1203.3 (g)(1).

(7) Each authority having jurisdiction shall include in its code enforcement program provisions requiring the authority having jurisdiction, or an individual or entity contracted by the authority having jurisdiction and satisfying the requirements set forth in section 1203.2 (e)(1) or 1203.2 (e)(2), to revoke or suspend an operating permit 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.

(h) Fire safety and property maintenance inspections.

(1) Each authority having jurisdiction shall include in its code enforcement program provisions requiring the authority having jurisdiction, or an individual or entity contracted by the authority having jurisdiction and satisfying the requirements set forth in section 1203.2 (e)(1) or 1203.2 (e)(2), to perform fire safety and property maintenance inspections either in-person or remotely. Remote inspections in lieu of in-person inspections may be performed when, at the discretion of the authority having jurisdiction, 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 authority having jurisdiction that the premises conform with the applicable requirements of the Codes. Should a remote inspection not afford the authority having jurisdiction sufficient information to make a determination, an in-person inspection shall be performed. Fire safety and property maintenance inspections shall be performed at intervals consistent with local conditions, but in no event shall such intervals exceed:

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

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

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

(2) Each authority having jurisdiction shall include in its code enforcement program provisions requiring that after each inspection, the authority having jurisdiction shall note the premises as satisfactory, or the owner and operator shall be notified as to the manner in which the premises fails to comply with the Uniform Code, including a citation to the specific Uniform Code provision or provisions that have not been met.

(3) Nothing in this subdivision shall require or be construed to require regular, periodic inspections of (A) owner-occupied one and two-family dwellings, or (B) agricultural buildings used directly and solely for agricultural purposes, provided, however, that this shall not be a limitation on inspections conducted at the invitation of the owner or occupant, or where conditions on the premises threaten or present a hazard to public health, safety, or welfare.

(4) In the case of a building referred to in section 1203.3 (h)(1)(ii), an authority having jurisdiction may accept an inspection 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 authority having jurisdiction or an individual or entity contracted by the authority having jurisdiction, provided that

(i) the authority having jurisdiction satisfies itself that the individual performing such inspection satisfies the requirements set forth in section 1203.2 (e)(1) or 1203.2 (e)(2);

(ii) the authority having jurisdiction satisfies itself that such inspection covers all elements required to be covered by a fire safety and property maintenance inspection;

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

(iv) a true and complete copy of the report of each such inspection is provided to the authority having jurisdiction; and

(v) upon receipt of each such report, the authority having jurisdiction takes the appropriate action prescribed by paragraph (2) of this subdivision or verifies the authorized entity performing the inspection has taken the appropriate action consistent with paragraph (2) of this subdivision.

(i) Procedure for complaints. Procedures shall be established for addressing bona fide complaints which assert that buildings, structures, conditions, or activities fail to comply with either or both of the Codes or with local laws, ordinances, or regulations adopted for administration and enforcement of the either or both of the Codes. The process for responding to such complaints shall include, when appropriate, provisions for inspection of the buildings, structures, conditions, and/or activities alleged to be in violation.

(j) Condition assessments of parking garages.

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

(2) Definitions. For the purposes of section 1203.3 (j), the following terms shall be deemed to have the meanings shown in this paragraph:

(i) Condition assessment. An on-site inspection and evaluation of a parking garage for evidence of deterioration of any structural element or building component of such parking garage, evidence of the existence of any unsafe condition in such parking garage, and evidence indicating that such parking garage is an unsafe structure.

(ii) Deterioration. The weakening, disintegration, corrosion, rust, or decay of any structural element or building component or any other loss of effectiveness of a structural element or building component.

(iii) Parking garage. Any building or structure, or part thereof, in which any structural level, or part thereof is used for parking or storage of motor vehicles, excluding:

(a) buildings in which the only level used for parking or storage of motor vehicles is entirely supported on soil or engineered fill, and not supported on structural framing;

(b) an attached or accessory structure providing parking exclusively for a detached one- or two-family dwelling; and

(c) a townhouse unit with attached parking exclusively for such unit.

(iv) Professional engineer. An individual who is licensed or otherwise authorized under article 145 of the Education Law to practice the profession of engineering in the State of New York and who has at least three years of experience performing structural evaluations.

(v) Responsible professional engineer. The professional engineer who performs a condition assessment, or under whose supervision a condition assessment is performed, and who seals and signs the condition assessment report.

(vi) Unsafe condition. The conditions identified as unsafe in sections 304.1.1, 305.1.1, and 306.1.1 of the PMCNYS.

(vii) Unsafe structure. A structure that is so damaged, decayed, dilapidated, or structurally unsafe, or is of such faulty construction or unstable foundation, that partial or complete collapse is possible.

(3) Condition assessments – general requirements. The owner or operator of each parking garage shall cause such parking garage to undergo an initial condition assessment as described in section 1203.3 (j)(4), periodic condition assessments as described in section 1203.3 (j)(5), and such additional condition assessments as may be required under section 1203.3 (j)(6). 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 authority having jurisdiction, in accordance with the requirements of section 1203.3 (j)(7). Before performing a condition assessment (other than the initial condition assessment) of a parking garage, the responsible professional engineer for such condition assessment shall review all available previous condition assessment reports for such parking garage.

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

(i) Parking garages constructed on or after August 29, 2018, 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) Parking garages constructed prior to August 29, 2018, shall undergo an initial condition assessment as follows:

(a) if originally constructed prior to January 1, 1984, then prior to October 1, 2019;

(b) if originally constructed between January 1, 1984 and December 31, 2002, then prior to October 1, 2020; and

(c) if originally constructed between January 1, 2003 and August 28, 2018, then prior to October 1, 2021.

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

(i) three years; or

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

(6) Additional condition assessments.

(i) If the latest condition assessment report for a parking garage includes a recommendation by the responsible professional engineer that an additional condition assessment of such parking garage, or any portion of such parking garage, be performed before the date by which the next periodic condition assessment would be required under section 1203.3 (j)(5), the authority having jurisdiction shall require the owner or operator of such parking garage to cause such parking garage (or, if applicable, the portion of such parking garage identified by the responsible professional engineer) to undergo an additional condition assessment no later than the date recommended in such condition assessment report.

(ii) If the authority having jurisdiction becomes aware of any new or increased deterioration which, in the judgment of the authority having jurisdiction, indicates that an additional condition assessment of the entire parking garage, or of the portion of the parking garage affected by such new or increased deterioration, should be performed before the date by which the next periodic condition assessment would be required under section 1203.3 (j)(5), the authority having jurisdiction shall require the owner or operator of such parking garage to cause such parking garage (or, if applicable, the portion of the parking garage affected by such new or increased deterioration) to undergo an additional condition assessment no later than the date determined by the authority having jurisdiction to be appropriate.

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



jurisdiction. Such condition assessment report shall be sealed and signed by the responsible professional engineer, and shall include:

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

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

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

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

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

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

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

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

(ix) the responsible professional engineer's recommendation regarding the time within which the next condition assessment of the parking garage or portion thereof should be performed. In making the recommendation regarding the time within which the next condition assessment of the parking garage or portion thereof should be performed, the responsible professional engineer shall consider the parking garage's age,

maintenance history, structural condition, construction materials, frequency and intensity of use, location, exposure to the elements, and any other factors deemed relevant by the responsible professional engineer in his or her professional judgment.

(8) The authority having jurisdiction shall review each condition assessment report. The authority having jurisdiction shall take such enforcement action or actions in response to the information in such condition assessment report as may be necessary or appropriate to protect the public from the hazards that may result from the conditions described in such report. In particular, but not by way of limitation, the authority having jurisdiction shall, by order to remedy or such other means of enforcement as the authority having jurisdiction may deem appropriate, require the owner or operator of the parking garage to repair or otherwise remedy all deterioration, all conditions that cause deterioration, and all unsafe conditions identified in such condition assessment report pursuant to section 1203.3 (j)(7)(ii) and section 1203.3 (j)(7)(iii). All repairs and remedies shall comply with the applicable provisions of the Uniform Code. Neither this paragraph nor the provisions of the code enforcement program of the authority having jurisdiction that implement this paragraph shall limit or impair the right of the authority having jurisdiction to take any other enforcement action, including but not limited to 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.

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

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

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

(i) to perform such construction inspections as are required by the stricter of section 1203.3 (b) or the code enforcement program of the authority having jurisdiction;

(ii) to perform such periodic fire safety and property maintenance inspections as are required by the stricter of section 1203.3 (h) or the code enforcement program of the authority having jurisdiction; and/or

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

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

(k) Climatic and Geographic Design Criteria. The city, town, and village responsible for administration and enforcement of the Uniform Code shall establish and make available climatic and geographic design criteria as required by the Uniform Code. This includes, but is not limited to:

(1) Establishing design criteria to include ground snow load; wind design loads; seismic category; potential damage from weathering, frost, and termite; winter design temperature; whether ice barrier underlayment is required; the air freezing index; and the mean annual temperature;

(2) Establishing heating and cooling equipment design criteria for structures within the scope of the RCNYS. The design criteria shall include the data identified in the Design Criteria Table found in Chapter 3 of the RCNYS; and

(3) Establishing flood hazard areas, flood hazard maps, and supporting data. The flood hazard map shall include, at a minimum, special flood hazard areas as identified by the Federal Emergency Management Agency in the Flood Insurance Study for the community, as amended or revised with:

- (i) the accompanying Flood Insurance Rate Map (FIRM);
- (ii) Flood Boundary and Floodway Map (FBFM); and
- (iii) related supporting data along with any revisions thereto.

(l) Recordkeeping. A system of records of the features and activities specified in section 1203.3 (a) through section 1203.3 (k) and of fees charged and collected, if any, shall be established and maintained.

#### **Section 1203.4 Program review and reporting.**

(a) 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 annually submit to the Secretary of State, on a form prescribed by the Secretary of state, a report of its activities relative to administration and enforcement of the Codes.

(b) Upon request of the Department of State, every authority having jurisdiction shall provide to the Department of State true and complete copies of the records and related materials such authority having jurisdiction is required to maintain; true and complete copies of such portion of such records and related materials as may be requested by the Department of State; and/or such excerpts, summaries, tabulations, statistics, and other information and accounts of its activities in connection with administration and enforcement of either or both of the Codes as may be requested by the Department of State. Failure to produce the requested

materials within a reasonable timeframe shall permit an inference that the minimum standards of this Part have not been met. No such inference shall be based on the failure to provide copies of records if such records were, prior to a request for copies, disposed of pursuant to the applicable records retention and disposition schedules established by the authority having jurisdiction or pursuant to the Arts and Cultural Affairs Law.

### **Section 1203.5 Compliance with an order to remedy.**

(a) Introduction and purpose. Section 381 of the Executive Law provides for the administration and enforcement of the Codes and authorizes the Secretary of State to promulgate regulations establishing minimum standards for such administration and enforcement. In addition, subdivision 2 of section 382 of the Executive Law provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code, who shall fail to comply with such order within the time fixed by the regulations promulgated by the Secretary of State pursuant to subdivision 1 of section 381 of the Executive Law, such time period to be stated in the order, shall be punishable by a fine of not more than \$1,000 per day of violation, or imprisonment not exceeding one year, or both. The purpose of this section is to fix, for the purposes of subdivision 2 of section 382 of the Executive Law, the time within which a person or entity served with an order to remedy is required to comply with such order to remedy.

(b) Definitions. In this section, the following terms shall have the following meanings:

(1) Order to remedy. An order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code.

(2) Comply with an order to remedy. To remedy completely each violation described in the order to remedy.

(c) Time for compliance with order to remedy. For the purposes of subdivision 2 of section 382 of the Executive Law, the time within which a person or entity served with an order to remedy is required to comply with such order to remedy is hereby fixed at 30 days following the date of such order to remedy.

(d) Statement to be included in order to remedy. For the purpose of complying with that part of subdivision 2 of section 382 of the Executive Law that provides “such time period to be stated in the order,” an order to remedy 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.”

(e) Service. An order to remedy shall be served personally or by certified or registered mail within five days of the date of the order. For the purposes of this section:

(1) if an order to remedy is served personally by any authorized means that requires more than one action by the person effecting service (such as service by “delivery and mail” similar to that authorized by CPLR 308[2]), the order to remedy shall be deemed to be served on the date on which the last required action is taken; and

(2) an order to remedy served by certified or registered mail shall be deemed to be served on the date it is mailed.

(f) Requiring immediate commencement of corrective action. Nothing in this section shall be construed as prohibiting any authority having jurisdiction that issues an order to remedy from including in such order to remedy provisions ordering the person or entity served with such order to remedy:

(1) to begin to remedy the violations described in the order to remedy immediately, or within some other specified period of time which may be less than 30 days; to continue diligently to remedy such violations until each such violation is fully remedied; and, in any event, to complete the remedying of all such violations within 30 days of the date of such order to remedy; and/or

(2) to take such other protective actions (such as vacating the building or barricading the area where the violations exist) which are authorized by the code enforcement program of the authority having jurisdiction or by any other applicable statute, regulation, rule, local law or ordinance, and which the authority having jurisdiction may deem appropriate, during the period while such violations are being remedied.

(g) Other means of enforcing the Uniform Code. Nothing in this section shall be construed as requiring an authority having jurisdiction to issue an order to remedy in a given situation where violations of the Uniform Code are found to exist if, in the judgment of the authority having jurisdiction, such violations can be addressed adequately by the use of other enforcement tools or by other means. Nothing in this section shall be construed as limiting the authority of an authority having jurisdiction to employ any other means of enforcing either or both of the Codes, including, but not limited to:

(1) issuing notices of violation;

(2) issuing appearance tickets;

(3) commencing and prosecuting an appropriate action or proceeding pursuant to that part of subdivision 2 of section 382 of the Executive Law that provides that any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in the “construction” (as defined in subdivision 4 of section 372 of the Executive Law) of any building who shall knowingly violate any of the applicable provisions of the Uniform Code or any lawful order of a city, village, town, county, state agency or the Secretary of State made thereunder regarding standards for construction, maintenance, or fire protection equipment and systems, shall be subject to a fine of not more than \$1,000 per day of violation, or imprisonment not exceeding one year, or both for the first 180 days, and for the following 180 days shall be punishable by a fine of no less than \$25 and not more than \$1,000 per day of violation or imprisonment not exceeding one year, or both and thereafter shall be punishable by a fine of no less than \$50 and not more than \$1,000 per day of violation or imprisonment not exceeding one year, or both;

(4) commencing and prosecuting an appropriate action or proceeding pursuant to subdivision 3 of section 382 of the Executive Law which seeks, in a case where the construction or use of a building is in violation of any provision of the Uniform Code or any lawful order obtained thereunder, an order from a Justice of the Supreme Court, New York City civil court, a city court, district court, or county court directing the removal of the building or an abatement of the condition in violation of such provisions;

(5) commencing and prosecuting an appropriate action or proceeding pursuant to subdivision 4 of section 382 of the Executive Law that provides that where a building has been altered in violation of any provision of the uniform code or any lawful order obtained thereunder, and such alteration impedes a person's egress from such building during a fire or other emergency evacuation, the owner of such building who has knowledge of such alteration or should have had knowledge of such alteration shall be subject to a civil penalty of up to \$7,500;

(6) issuing stop work orders;

(7) revoking or suspending building permits, operating permits, and/or certificates of occupancy pursuant to the procedures established in the code enforcement program of the authority having jurisdiction or pursuant to any other applicable statute, regulation, rule, local law or ordinance;

(8) commencing and prosecuting an appropriate action or proceeding to impose such criminal and/or civil sanctions as may be provided in any applicable statute, regulation, rule, local law or ordinance;

(9) condemning and/or placarding a building in accordance with the applicable provisions of the Uniform Code;

(10) taking any action authorized by the procedures for identifying and addressing unsafe structures and equipment as established in the code enforcement program of the authority having jurisdiction or by any other applicable statute, regulation, rule, local law or ordinance; or



(11) issuing orders to remedy violations of the Energy Code pursuant to subdivision (1) of section 11-108 of the Energy Law.

(h) Office of Fire Prevention and Control. For the purposes of this section, the term order to remedy shall not include any order issued by the Office of Fire Prevention and Control pursuant to section 156-e of the Executive Law (or pursuant to any regulation promulgated thereunder) requiring the remedying of any condition found to exist in, on or about any building under the jurisdiction of a public college or independent college (as these terms are defined in section 807-b of the Education Law) which violates the Uniform Code. Nothing in this section shall be construed as fixing the time within which a public college or independent college shall have to comply with any such order, or as requiring any such order to include the statement prescribed in section 1203.5 (d).