



**NYS UNIFORM FIRE PREVENTION AND BUILDING CODE:  
WHAT ELECTED OFFICIALS NEED TO KNOW**

**A. The Uniform Code.**

In 1981, New York State adopted a new Article 18 of the Executive Law providing for the development and implementation of a comprehensive building and fire code. Article 18, consisting of sections 370 through 383 of the Executive Law, sets forth the process by which the code is to be developed, maintained, administered, and enforced for the protection of all New Yorkers. Both State government and local government are participants in this process. The code, called the New York State Uniform Fire Prevention and Building Code (the “Uniform Code”), took effect January 1, 1984 and prescribes minimum standards for both fire prevention and building construction. It is applicable in every municipality of the State (except the City of New York, which was permitted to retain its own code).

Responsibility for developing and maintaining the Uniform Code is vested in the State Fire Prevention and Building Code Council (the “Code Council”), a seventeen member body composed of State officials, local officials, and private individuals well versed in building construction and maintenance standards. The Code Council is part of the Department of State and the Secretary of State serves as its Chair. The Code Council is required to meet at least quarterly but additional meetings may be called by the Chair or by petition of five members of the Code Council.

Any individual or group may propose an amendment of the Uniform Code. Proposed amendments are typically submitted to the Department of State, and reviewed by technical subcommittees established for that purpose. The technical subcommittees guide and assist the Department of State in formulating the recommendations it makes to the Code Council. The technical subcommittees include Department of State staff, local code enforcement personnel, local fire prevention personnel, and other local government officials, as well as design professionals and others involved in the construction industry. The Department of State is particularly grateful for the valuable contributions made by all who serve on these subcommittees.

If the Code Council finds the proposed change to be necessary or advisable, it commences the rule making process set forth in the State Administrative Procedure Act. The rule making process formally begins with publication of a notice of proposed rule making in the State Register. Publication of a notice in the State Register commences a period for public comment upon any

proposal. Article 18 of the Executive Law requires that the public comment period include at least one public hearing. Prior to adopting the amendment, the Code Council must assess any public comment it has received during the comment period or at the public hearing(s).

An individual city, town or village is not required to “adopt” the Uniform Code or to take any other affirmative step to make the Uniform Code effective within the municipality. The Uniform Code is automatically in effect in each municipality in the State (except New York City) by directive of the State Legislature. An individual city, town, or village *cannot* choose to exclude itself from all or any part of the Uniform Code.

## **B. Administration and Enforcement of the Uniform Code.**

Executive Law § 381 requires every city, town and village to administer and enforce the Uniform Code within its boundaries. However, Executive Law § 381 permits a municipality to “opt out” of its administration and enforcement responsibilities by adopting a local law which provides that the municipality will not administer and enforce the Uniform Code. Any such local law must be enacted prior to July 1 in any year, and becomes effective on January 1 of the following year. If a municipality “opts out” of its administration and enforcement responsibilities by adopting such a local law, the responsibility for administering and enforcing the Uniform Code passes to the county in which the municipality is located.\* Note, however, that even if a municipality “opts out” of its administration and enforcement responsibilities, the Uniform Code will remain in effect in the municipality.

\* Executive Law § 381 also provides that a county may adopt a local law “opting out” of code administration and enforcement responsibilities. If a municipality “opts out,” and if the county in which that municipality is located also “opts out,” the responsibility for administering and enforcing the Uniform Code in that municipality passes to the Department of State.

Each municipality that has not “opted out” of its code administration and enforcement responsibilities must develop and implement a program for enforcement of the Uniform Code within its boundaries. Although fire prevention and building construction standards (i.e., the provisions of the Uniform Code) are uniform throughout the State, municipal programs for enforcing the code are not required to be uniform. Indeed, a municipal code enforcement program appropriate for a large city containing many apartment buildings and a downtown commercial core would almost certainly be unsuitable for a small rural town containing mostly single family homes. Each municipality is strongly encouraged to consider local needs and conditions when designing its local code enforcement program.

However, in designing its code enforcement program, municipal officials must be aware that the Article 18 of the Executive Law directs the Secretary of State to promulgate regulations prescribing minimum standards for administration and enforcement of the Uniform Code. The Secretary has adopted such regulations in 19 NYCRR Part 1203 (Uniform Code: Minimum Standards for Administration and Enforcement). Any municipal program for administration and enforcement of the Uniform Code must conform with the requirements of Part 1203, and must include the following features:

1. **Designating Responsibility for Code Enforcement.** The persons, offices, departments, agencies or combinations thereof responsible for administration and enforcement of the Uniform Code must be clearly identified.
2. **Building Permits.** Building permits must be required for any work which is required to conform to the Uniform Code. Certain exceptions are permitted.
3. **Construction Inspections.** Inspections of certain specified elements of the construction process must be required. Building permits holders must keep work accessible and exposed until inspected and accepted by the municipality.
4. **Stop Work Orders.** Stop work orders must be issued to halt work that is determined to be contrary to provisions of the Uniform Code, or is being conducted in a dangerous or unsafe manner, or is being performed without obtaining a required permit.
5. **Certificates of Occupancy or Compliance.** A certificate of occupancy or a certificate of compliance must be required (1) for all work for which a building permit was required and (2) whenever the general occupancy classification of a building is changed.
6. **Notifications.** The code enforcement program must include procedures for the chief of any fire department providing fire fighting services for a property to notify the code enforcement official of any fire or explosion involving any structural damage, fuel burning appliance, chimney or gas vent.
7. **Unsafe Structures and Equipment.** The code enforcement program must include procedures for identifying and addressing unsafe structures and equipment.
8. **Operating Permits.** Operating permits must be required for conducting certain specified activities or using certain specified categories of buildings.
9. **Fire Safety and Property Maintenance Inspections.** The code enforcement program must provide for fire safety and property maintenance inspections of all buildings which contain an area of public assembly, all multiple dwellings, and all nonresidential occupancies (other than agricultural buildings used directly and solely for agricultural purposes).\* The interval between inspections of buildings containing an area of public assembly cannot exceed one year. The interval between inspections of multiple dwellings and nonresidential occupancies must be consistent with local conditions; provided, however, that such interval cannot exceed one year for dormitory buildings, and such interval cannot exceed three years for all other buildings.

\* Executive Law § 381(1), as amended by Chapter 159 of the Laws of 2007, provides that the Part 1203 rules adopted by the Secretary of State shall not “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 where conditions on the premises threaten or present a hazard to public health, safety, or welfare.”

10. **Complaint Procedures.** The code enforcement program must include procedures for addressing bona fide complaints which assert that conditions or activities fail to comply with the Uniform Code or with local laws, ordinances or regulations adopted for administration and enforcement of the Uniform Code.
11. **Record Keeping.** The code enforcement program must establish a system of records of the features and activities specified in above and of fees, if any, charged and collected.
12. **Reports.** Every municipality responsible for administration and enforcement of the Uniform Code is required to submit an annual report of its activities relative to administration and enforcement of the Uniform Code to the Secretary of State. The Department of State has developed forms to be used in satisfying this reporting obligation. The forms are available on the Department's website at <http://www.dos.ny.gov/code/form1203.htm>.

In establishing minimum standards set forth in Part 1203, the Secretary of State has sought to provide sufficient flexibility to allow each municipality to establish a program for administration and enforcement of the Uniform Code which is appropriate for local conditions, and to provide local government official with wide discretion in the design and implementation of the program. While the minimum standards set forth in Part 1203 must be satisfied, local needs and circumstances should be considered when designing a municipal code enforcement program. Members of the staff of the Codes Division in the Department of State are available to answer questions regarding the process of administering and enforcing the code.

Municipal officials should also be aware of the requirements regarding training and certification of code enforcement officers. Pursuant to 10 NYCRR Part 434 (Minimum Standards for Code Enforcement Personnel in the State of New York) and 19 NYCRR Part 1208 (Uniform Code: Training of Staff), all local code enforcement personnel must complete a prescribed program of minimum basic code enforcement training, and must receive annual in-service training. The Department of State maintains a list of municipal code enforcement personnel who have successfully fulfilled the training requirements for Code Enforcement Officials pursuant to 19 NYCRR Parts 434 and 1208. This list is posted on the Department's website at <http://www.dos.ny.gov/code/certCEOlist.htm>.

### **C. Variances.**

Article 18 of the Executive Law also directs the Secretary of State to promulgate regulations establishing procedures whereby provisions or requirements of the Uniform Code may be varied or modified in cases where strict compliance with the provision or requirement would entail practical difficulty or unnecessary hardship or would otherwise be unwarranted. The Secretary has adopted 19 NYCRR Part 1205 (Uniform Code: Variance Procedures) which establishes a dual process for obtaining variances from Uniform Code provisions. Cases which involve a *de minimus* variance or a modification which does not substantially affect the code's provisions for health, safety or security are classified as routine cases and are processed administratively by the Department of State. More substantial variance requests are reviewed and decided by regional boards of review.

#### **D. More Restrictive Local Standards.**

Executive Law § 379 provides that a municipality may enact or adopt a local law or ordinance imposing standards for construction in the municipality that are “higher or more restrictive” than the corresponding standards in the Uniform Code. If a municipality enacts or adopts such a standard (often referred to as a “more restrictive local standard” or “MRLS”), the municipality must, within 30 days after the enactment or adoption, notify the Code Council and petition the Code Council for approval of the MRLS. If the Code Council finds that (1) the MRLS is, in fact, higher or more restrictive than the corresponding provision of the Uniform Code, and (2) the MRLS is reasonably necessary because of special conditions prevailing within the municipality, and (3) the MRLS conforms with accepted engineering and fire prevention practices and the purposes of Article 18 of the Executive Law, the Code Council will approve (or “adopt”) such MRLS, in whole or part. The Code Council has the power to limit the term or duration of the MRLS, to impose conditions in connection with the adoption of the MRLS, and to terminate the MRLS at such times, and in such manner as the Code Council may deem necessary, desirable or proper.

#### **E. Functions of the Department of State.**

The functions of the Department of State associated with the Uniform Code and the Code Council are performed by the Department of State’s Division of Code Enforcement and Administration. The Division’s functions are performed by the following Units:

- **Regional Services Unit.** Direct service to the public is provided primarily through the activities of the Regional Services Unit, whose staff are located in regional offices throughout the State. Services provided by the Regional Services Unit include technical assistance on code issues for local government officials, design professionals or the general public, and the enforcement of the code in municipalities which have declined to enforce the code themselves. Regional staff also process routine variance petitions and serve as technical advisors to the members of the regional boards of review.
- **Educational Services Unit.** The Educational Services Unit coordinates matters regarding the training of code enforcement personnel and conducts both basic training and in-service training classes for local code enforcement officers and other State agency staff.
- **Code Interpretation Unit.** The Code Interpretation Unit drafts code interpretations in response to specific questions and requests for guidance. Executive Law § 376 authorizes the Secretary of State to issue and publish written interpretations of the Uniform Code upon the request of a permit applicant or an individual responsible for enforcing the code.
- **Technical Services Unit.** The Technical Services Unit provides technical assistance concerning the Uniform Code to code enforcement officials, fire service officials, architects, engineers, legislators, state agencies, attorneys, builders, and private citizens. This Unit also enforces the provisions of the Uniform Code pertaining to construction of factory manufactured buildings prior to site delivery; this process involves a review and approval of building systems submitted by manufacturers, as well as plant inspections, and the issuance of the Insignias of Approval for factory manufactured buildings. The

Technical Services Unit also administers the Manufactured Housing Program (sometimes referred to as the “mobile home” program) and mediates complaints from owners of manufactured homes.

- **Energy Services Unit.** The Energy Services Unit performs functions relating to the State Energy Conservation Construction Code (the Energy Code). The Energy Code addresses the design of energy-efficient building envelopes and the installation of energy-efficient mechanical, lighting and power systems through requirements emphasizing performance. The Energy Code also provides minimum standards of energy-efficiency levels to be required in commercial and residential buildings. One of the primary benefits of this code to building owners are reduced fuel needs which lower operating costs. Reduced energy consumption has a tremendous positive benefit to NYS by reducing dependence upon imported energy sources, by reducing associated emissions and pollutants produced by fossil fuel and electric use.
- **Code Development Unit.** The Code Development Unit ensures that the Uniform Code and the Energy Code reflect new developments in building construction, fire prevention, and energy conservation. Staff solicits and reviews proposed code changes.

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