

UPDATES TO STATE BUILDING CODES WILL REQUIRE LOCAL REVISIONS: GIVEN THE ADDED WORKLOAD ON CODE ENFORCEMENT, MUNICIPALITIES MAY WISH TO EVALUATE THE SUFFICIENCY OF LOCAL PERMIT FEES

Hodgson Russ Municipal Alert
November 28, 2022

Periodically the New York State Department of State (“DOS”) updates the New York State Uniform Fire Prevention and Building Code (“Uniform Code”) and New York State Energy Conservation Construction Code (“Energy Code”). Recent Code changes also gave rise to updated “Minimum Standards for Administration and Enforcement” (codified in 19 NYCRR Part 1203), meaning that municipalities with enforcement power must update their procedures in line with these new minimum standards. Local code enforcement programs must incorporate these changes by December 30, 2022.

The need for updates provides an opportunity for review of implementing statutes and enforcement procedures. The State Regulations authorize adoption of administration and enforcement provisions that are more stringent than the minimum standards, which usually requires legislative action. Some notable changes in the requirements that municipalities should be aware of include:

- The new rule adds definitions to 19 NYCRR § 1203.1 (e.g., “Authority having jurisdiction” is defined as “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.”)
- 19 NYCRR § 1203.3 now states that an authority having jurisdiction may adopt more stringent provisions than the minimum standards set in the rule.
- An authority having jurisdiction may contract with an individual or business to provide safety inspector and code enforcement activities on its behalf, subject to certain conditions.
- Pursuant to 19 NYCRR § 1203.3(a)(3), an authority having jurisdiction now cannot approve any required construction documents unless such documents include information required in the Uniform and Energy Codes, showing information including, but not limited to, (as applicable):

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- Describing the location, nature, extent, and scope of the proposed work
- Showing that the proposed work will conform to the applicable provisions of the Uniform and Energy Codes
- Showing the location, construction, size, and character of all portions of the means of egress
- Showing a representation of the building thermal envelope
- Showing structural information including but not limited to braced wall designs, the size, and section
- Relative locations of structural members, design loads, and other pertinent structural information
- Showing the proposed structural, electrical, plumbing, mechanical, fire-protection, and other service systems of the building
- A written statement indicating compliance with the Energy Code
- A site plan, drawn to scale, and drawn in accordance with an accurate boundary survey
- Evidence that the documents were prepared by a licensed and registered architect and registered professional engineer and in compliance with practice guidelines and
- 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.
- Authorities having jurisdiction must now provide for construction inspections, inspections of premises for operating permits, and fire safety and property maintenance inspections to be held either in-person or remotely, if required information can be properly provided.
- Construction inspections shall now also include inspections for Energy Code compliance such as insulation, air leakage, system controls, energy recovery, high-performance lighting, as well as installation of factory manufactured buildings and manufactured homes.
- To provide certificates of occupancy or compliance, an authority having jurisdiction must review written statements of structural observations and/or final reports of special inspections, as required by the Uniform Code and (1) determine whether the information provided adequately demonstrates compliance with the applicable provision of the Uniform Code; (2) review written statements of testing results demonstrating compliance with the Energy Code; and (3) review manufacturer information for manufactured homes.
- New requirements for operating permits: An authority having jurisdiction may exempt certain uses listed above from obtaining an operating permit, with express authorization in the certificate of occupancy or certificate of compliance, and where fire safety and property maintenance inspections and condition assessments are completed.
- Fire safety and property maintenance inspections must be performed for public and private schools and colleges annually.
- There must be a provision requiring that after each fire safety and maintenance inspection, the authority having jurisdiction shall deem the premises as satisfactory, or if not satisfactory, the owner or operator shall be provided a notification of such finding, including a citation to the specific Uniform Code provision or provisions that have not been met.

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- An authority having jurisdiction must establish and publish climatic and geographic design criteria as required by the Uniform Code, including but not limited to, creating design criteria to include ground snow load, wind design loads, seismic category, etc.; establishing heating and cooling equipment design criteria; and establishing flood hazard areas, flood hazard maps, and supporting data.
- Post-inspection follow-up requirements include identifying compliance status of the work inspected pertaining to inspections for building permits, operating permits, and fire safety and property maintenance.
- The operating permits section has been expanded to include more categories such as: energy storage systems, sugarhouse alternative activities, mobile food preparation vehicles, and more to align with the new version of the Uniform Code. Additionally, the threshold for assembly areas was reduced from assembly areas with an occupancy of 100 or more to 50 or more to include all assembly areas included in the Uniform Code.

Hodgson Russ Takeaways

The changes to Part 1203 are considerable. Municipalities need to be prepared to facilitate these new requirements as they require additional efforts by building inspectors and code enforcement officers to ensure compliance. Municipalities may wish to re-adopt their enabling legislation to cover all points. The mandatory updates also present an opportunity to adopt the New York Energy Stretch Code, which is more stringent than the Energy Code.

The additional obligations imposed on enforcement officials should trigger a review of each enforcement authority's fee schedule. Local governments are authorized to recover their costs through a permit schedule, which is established to recover the typical cost of reviews and inspections, rather than the unique cost for each project under review. Additional inspection and enforcement requirements may justify revisions to the fee schedule, along with other increases in the cost of maintaining the enforcement program. The time is right for such review, as most communities adopt their fee schedules at the annual reorganization meeting.

If you have any questions about these updates to 19 NYCRR Part 1203 or the implementation requirements, please contact [Daniel A. Spitzer](#), (716.848.1420), [Charles W. Malcomb](#) (716.848.1261), [Henry A. Zomerfeld](#) (716.848.1370), [Alicia R. Legland](#) (518.433.2416), or any member of our [Municipal Law Practice](#).