



# Enforcing and Administering the Uniform Fire Prevention & Building Code: The 2022 Minimum Standards

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## A BRIEF HISTORY OF THE UNIFORM CODE

In New York State, building construction and fire safety is governed by the *New York State Fire Prevention and Building Code*<sup>1</sup> (the *Uniform Code*) which prescribes minimum standards for both fire prevention and building construction. The *Uniform Code* addresses such building construction and occupancy issues as fire prevention, life safety, structural stability, sanitation, property maintenance, and accommodation, for people with disabilities. The *Uniform Code* is applicable in every municipality in the state except the City of New York, which has its own code.

Municipalities **do not** need to enact any local law or resolution for the *Uniform Code* or the amendments thereto (the most recent of which were adopted and became effective on May 12, 2020), to be applicable in their jurisdictions. Stated differently, the *Uniform Code* and any amendments made to it by the New York State Code Council are effective throughout the State of New York by force of State law. Moreover, local governments may not exclude themselves from the *Uniform Code's* provisions.

While the New York State Code Council establishes the *Uniform Code's* substantive standards, every local government must adopt a local law that provides for the enforcement and administration of the *Uniform Code* within its corporate boundaries. To that end, the Department of State has promulgated rules and regulations imposing minimum enforcement and administration standards for these municipal programs.

Although the *Uniform Code's* substantive standards are consistent throughout the State, each municipality's needs with respect to administering and enforcing the *Uniform Code* are not necessarily the same. For example, the

municipal code enforcement program appropriate for a large city with numerous apartment buildings and a large downtown commercial core is most likely not an appropriate program for a city or village with a small main street and mostly single-family homes. Consequently, local needs and conditions should be considered when designing a municipality's *Uniform Code* enforcement program.

Local governments do not enforce or administer the *Uniform Code* on State-owned property, public school property, or the property of other municipalities in their jurisdiction. The Department of State enforces and administers the *Uniform Code* on State-owned property, the Department of Education enforces and administers the *Uniform Code* on both local public school property and State University System property, and each local government is responsible for enforcing and administering the *Uniform Code* on property it owns, even if that property is not within its own municipal territory.<sup>2</sup> Consequently, a city or village would enforce and administer the *Uniform Code* on property it owns outside of its boundaries, and a town would enforce and administer the *Uniform Code* on property it owns within a city or village.

Although municipalities may not exclude themselves from the *Uniform Code*, municipalities may, by local law, decline to enforce and administer the *Uniform Code* within their boundaries, in which case, responsibility for enforcing and administering the *Uniform Code* passes to the county in which the city or village is located. The transfer of such responsibility becomes effective the following January 1, provided the local governing body adopts the necessary local law prior to July 1.<sup>3</sup> Municipalities may reassume the responsibility for enforcing the *Uniform Code* within their jurisdiction by adopting a local law repealing the previous opt-out local law. Authority to administer and enforce the

*Uniform Code* returns to the municipality as of the second local law's effective date.

Municipalities that are struggling with budgetary constraints and/or code enforcement staffing may wish to consider entering into an inter-municipal agreement with neighboring municipalities to administer and enforce the *Uniform Code* as a means both of improving service and saving money.

### **NEW MINIMUM STANDARDS FOR ENFORCING AND ADMINISTERING THE UNIFORM CODE**

On December 29, 2021, the State published notice that a new version of NYCRR Title 19, Ch. XXXII, Pt. 1203 has been adopted with an effective date of December 30, 2022. These changes were needed to coordinate with the 2020 amendments to the *Uniform Code*.

Notable changes to Part 1203 include, but are not limited to, the following:

- A definitions section was added to the regulation;
- Requirements for post-inspection follow-up to assess compliance with respect to building permits, operating permits, and fire safety and property maintenance;
- The operating permits section has been expanded to include more categories for which operating permits are required, including energy storage systems, sugarhouse alternative activities, and mobile food preparation vehicles.

Additionally, the assembly areas threshold was reduced to 50 or more occupants to match the assembly areas included in the 2020 *Uniform Code*;

An optional exemption from the operating permit requirement was added and allows local enforcement jurisdictions to exempt processes or activities, or buildings, structures, or facilities which may normally require an operating permit, provided (1) the use is expressly authorized by a Certificate of Occupancy or the Certificate of Compliance, (2) fire safety and property maintenance inspections are performed in accor-

dance with section 1203.3(h), and (3) applicable condition assessments are performed in compliance with section 1203.3(j); and

- Cities, towns, and villages must establish and make available climatic and geographic design criteria as required by the *Uniform Code*.

As a result of the amendments to Part 1203, local governments must review and update their local laws that provide for administering and enforcing the *Uniform Code*.

The Department of State's Division of Building Standards and Codes has developed an updated model local law which is available online at <https://dos.ny.gov/code/local-government-state-agency-enforcement-programs>. Note that this is simply a model and should only be considered a starting point for local officials when updating their local law providing for the enforcement and administration of the *Uniform Code*. Updating the local *Uniform Code* enforcement and administration program should be undertaken in consultation with the code enforcement and fire safety staff, as well as the municipal attorney.

The full text of the new Part 1203 rule is available online at <https://dos.ny.gov/system/files/documents/2021/12/2021-12-10-full-text-of-rule-part-1203.pdf>.

### **CONCLUSION**

In addition to this update of the local *Uniform Code* program, municipalities should periodically review the effectiveness of their enforcement program to insure that it is addressing their community's code enforcement and fire safety needs. For more information on the State's *Uniform Code*, visit the State's Division of Building Standards and Codes website at <https://dos.ny.gov/building-standards-and-codes> or contact NYCOM General Counsel Wade Beltramo, at (518) 463-1185 or by email at [wade@nycom.org](mailto:wade@nycom.org).

#### *Endnotes*

1. For a full description of the history of the *Uniform Code*, see the New York State Department of State's James A. Coon Local Government Technical Series "Administration and Enforcement of the *Uniform Fire Prevention and Building Code* and the *Energy Conservation Construction Code*," which can be accessed at <https://dos.ny.gov/system/files/documents/2022/07/administration-and-enforcement-of-the-uniform-code-2111.pdf>.

2. See N.Y. Comp. Codes R. & Regs. tit. 19, § 1201.2.

3. Counties may also decline to enforce the code, in which case responsibility for code enforcement passes to the Department of State.