



St. Regis Mohawk Tribe

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Vice-Chief Executive Officer
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TRIBAL COUNCIL RESOLUTION

TCR 99-074

SAINT REGIS MOHAWK TRIBE

FIRE PREVENTION AND BUILDING CODE ACT

WHEREAS, the Saint Regis Mohawk Tribal Council is the duly recognized governing body with inherent sovereign powers of the Saint Regis Mohawk Tribe, and;

WHEREAS, the Tribal Council is responsible for promoting the health, safety, education and general welfare of all Tribal community members, and;

WHEREAS, the Tribal Council holds the authority to establish laws needed for effective governance on the Saint Regis Mohawk Reservation, and;

WHEREAS, in accordance with Section 12 (a) of the Tribal-State Compact between the St. Regis Mohawk Tribe and the State of New York, the Tribal Council recognizes the need to adopt the New York State Uniform Fire Prevention and Building Code Act, Article 18, then;

THEREFORE BE IT RESOLVED THAT THE TRIBAL COUNCIL hereby adopts the New York State Uniform Fire Prevention and Building Code Act, Article 18 as part of the laws of the Saint Regis Mohawk Tribe, and;

BE IT FURTHER RESOLVED THAT the Uniform Fire Prevention and Building Code Act shall be codified as the **Saint Regis Mohawk Tribal Uniform Fire Prevention and Building Code Act of 1999** in accordance with procedures provided for in the Tribal Law Development, Interpretation, and Codification Procedures Act of 1994.

FURTHER BE IT RESOLVED that the St. Regis Mohawk Tribe reserves the authority to amend the provisions of the Uniform Fire Prevention and Building Code Act at any time so as to impose Tribal standards, laws, rules or regulations which are equally or more rigorous than New York State with respect to its Class III gaming facilities, in accordance with Section 12 (a) of the Tribal-State Compact regarding Class III gaming.

Type of Document: Tribal Council Resolution 99-074
Subject: SAINT REGIS MOHAWK TRIBAL Uniform Fire Prevention and Building Code Act of 1999
Date Submitted to Tribal Council: April 26, 2999

Tribal Council Sponsor: B. Garrow

Page: 3 of 2

SAINT REGIS MOHAWK TRIBE ENACTMENT PROVISIONS:

Enacted by the Saint Regis Mohawk Tribal Council on this 30 day of April, 1999 by a recorded vote of 5 FOR, 0 AGAINST, and 0 ABSTAINED.

Bryan Garrow
Bryan Garrow, Tribal Council Chairperson

Hilda E. Smoke
Hilda E. Smoke, Tribal Council Member

Barbara A. Lazore
Barbara A. Lazore, Tribal Council Member

Alma Ransom
Alma Ransom Tribal Council Member

Paul O. Thompson
Paul O. Thompson, Tribal Council Member

ATTEST BY:

Marianne Berw, D.C. 4-30-99
Carol T. Herne, Tribal Clerk Date

TRIBAL CHIEF EXECUTIVE APPROVAL:

Approved and signed into law by the Tribal Chief Executive on this 30th day of April, 1999.

Edward D. Smoke
Edward D. Smoke, Tribal Chief Executive

TRIBAL CHIEF EXECUTIVE VETO ACTION:

Vetoed by the Tribal Chief Executive on this _____ day of _____, 199____ as per Article VII, Section 5 with a Veto message.

Edward D. Smoke, Tribal Chief Executive

TRIBAL COUNCIL ACTION ON TRIBAL CHIEF EXECUTIVE VETO:

The Tribal Council in session duly met on this _____ day of _____, 199____ OVERRODE the veto of the Tribal Chief Executive by a vote of _____ FOR, _____ AGAINST and _____ ABSTAINED.

The Tribal Council in session duly met on this _____ day of _____, 199____, SUSTAINED the veto of the Tribal Chief Executive by a recorded vote of _____ FOR, _____ AGAINST, and _____ ABSTAINED.

ATTESTED TO AND RECORDED IN THE SAINT REGIS MOHAWK TRIBAL RECORDS:

Marianne Berw, D.C. 4-30-99
Carol T. Herne, Tribal Clerk Date

Recorded in Tribal Book Number: _____ Page Number: _____

ARTICLE 18—NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE ACT

Section

- 370. Short title.
- 371. Statement of legislative findings and purposes.
- 372. Definitions.
- 373. Required immediate applicability of existing state codes.
- 374. State fire prevention and building code council.
- 375. Powers of the council.
- 376. Powers of the commissioner.
- 377. New York state uniform fire prevention and building code.
- 378. Standards for New York state uniform fire prevention and building code.
- 379. Incorporation of higher standards by council upon recommendation of local government; local building regulations.
- 380. Granting authority.
- 381. Administration and enforcement of the New York state uniform fire prevention and building code.
- 382. Remedies.
- 383. Construction with other laws; severability.

Historical and Statutory Notes

Repeal of Article; Savings Provision. L.1981, c. 707, § 12, eff. Jan. 1, 1984, provided: "Article eighteen, as added by chapter eight hundred of the laws of nineteen hundred fifty-one [this article], and articles eighteen-A, eighteen-B and nineteen-AA of the executive law are REPEALED, provided however, that such repeal shall not impair the continued validity, after the effective date of such repeal [Jan 1, 1984] of any action taken prior to such date pursuant to the authority provided in such articles."

Former Article 18. Article, comprising §§ 370 to 387, L.1951, c. 800, related to the former state building code and was repealed by L.1981, c. 707, § 12, eff. Jan. 1, 1984.

Section 374-a, added L.1951, c. 580, § 5; amended L.1955, c. 787; L.1961, c. 197, § 6; L.1972, c. 656, § 3; L.1974, c. 449, § 1, related to procedures for acceptance and withdrawal by municipalities and was repealed by L.1981, c. 707, § 12.

Section 375-a, added L.1978, c. 302, § 1, related to passenger elevator re-

quirements and was repealed by L.1981, c. 707, § 12.

Section 378-a, added L.1961, c. 197, § 10; amended L.1972, c. 766, § 1, related to powers of the commissioner of housing and was repealed by L.1981, c. 707, § 12.

Section 378-b, added L.1974, c. 373, § 1, related to additional powers of the commissioner and state aid reimbursement and was repealed by L.1981, c. 707, § 13, effective Apr. 1, 1982.

Section 384, L.1951, c. 800, related to injunction and abatement of illegal construction and was repealed by L.1981, c. 707, § 12.

Section 385, L.1951, c. 800; amended L.1967, c. 680, § 37, related to penalties and was repealed by L.1981, c. 707, § 12.

Section 386, L.1951, c. 800; amended L.1951, c. 580, § 9; L.1961, c. 197, § 15; L.1978, c. 311, § 2, related to local building regulations and was repealed by L.1981, c. 707, § 12.

Section 387, L.1951, c. 800, related to construction of article and was repealed by L.1981, c. 707, § 12.

BUILDING CODE ACT

Art. 18

§ 370

Cross References

- Multiple dwellings, see Multiple Dwelling Law.
- Multiple residences, see Multiple Residence Law.
- Rules and regulations, see § 102; State Administrative Procedure Act § 201 et seq.
- State energy conservation construction code act, see Energy Law § 11-101 et seq.

New York Codes, Rules and Regulations

- Office of fire prevention and control, rules of, see generally, 19 NYCRR Part 425 et seq.

United States Code Annotated

- Fire prevention and control, see § 2201 et seq. of Title 15, Commerce and Trade.
- National institute of building sciences, see § 1701j-2 of Title 12, Banks and Banking.

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§ 370. Short title

This article shall be known and may be cited as the "New York state uniform fire prevention and building code act".

(Added L.1981, c. 707, § 1.)

Historical and Statutory Notes

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Former § 370. Section, L.1951, c. 800; amended L.1951, c. 580, § 2, stated legislative findings and purposes of state building code and was repealed by L.1981, c. 707, § 12.

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislation, section is not applicable to buildings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any provision of article 18 which is similar

to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and

Duties. Rights and remedies unimpaired by L.1981, c. 707, and all functions, powers, duties, rights and obligations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

Cross References

Housing standards for farm labor camps, prescription of, see Public Health Law § 225.

Library References

American Digest System

Health regulations and offenses, see Health and Environment ¶32.
Municipal corporations; building regulations, see Municipal Corporations ¶601.

Encyclopedia

Health regulations in general; buildings, slum clearance, and public housing, see C.J.S. Health and Environment § 28 et seq.
Municipal corporations; building and zoning regulations in general, see C.J.S. Municipal Corporations § 224.
Municipal corporations; building regulations, see C.J.S. Municipal Corporations § 225.

WESTLAW Research

Health and environment cases: 199k[add key number].
Municipal corporations cases: 268k[add key number].

§ 371. Statement of legislative findings and purposes

1. The legislature hereby finds and declares that:

a. The present level of loss of life, injury to persons, and damage to property as a result of fire demonstrates that the people of the state have yet to receive the basic level of protection to which they are entitled in connection with the construction and maintenance of buildings;

b. There does not exist for all areas of the state a single, adequate, enforceable code establishing minimum standards for fire protection and construction, maintenance and use of materials in buildings. Instead, there exists a multiplicity of codes and requirements for various types of buildings administered at various levels of state and local government. There are, in addition, extensive areas of the state in which no code at all is in effect for the general benefit of the people of the state;

c. The present system of enforcement of fire protection and building construction codes is characterized by a lack of adequately

trained personnel, as well as inconsistent qualifications for personnel who administer and enforce those codes;

d. Whether because of the absence of applicable codes, inadequate code provisions or inadequate enforcement of codes, the threat to the public health and safety posed by fire remains a real and present danger for the people of the state; and

e. The multiplicity of fire protection and building construction code requirements poses an additional problem for the people of the state since it increases the cost of doing business in the state by perpetuating multiple requirements, jurisdictional overlaps and business uncertainties, and, in some instances, by artificially inducing high construction costs.

2. The legislature declares that it shall be the public policy of the state of New York to:

a. Immediately provide for a minimum level of protection from the hazards of fire in every part of the state;

b. Provide for the promulgation of a uniform code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction. In providing for such a uniform code, it is declared to be the policy of the state of New York to:

(1) reconcile the myriad existing and potentially conflicting regulations which apply to different types of buildings and occupancies;

(2) recognize that fire prevention and fire prevention codes are closely related to the adequacy of building construction codes, that the greatest portion of a building code's requirements are fire safety oriented, and that fire prevention and building construction concerns should be the subject of a single code;

(3) place public and private buildings on an equal plane with respect to fire prevention and adequacy of building construction;

(4) require new and existing building alike to keep pace with advances in technology concerning fire prevention and building construction, including, where appropriate, that provisions apply on a retroactive basis; and

(5) provide protection to both residential and non-residential buildings;

c. Insure that the uniform code be in full force and effect in every area of the state;

d. Encourage local governments to exercise their full powers to administer and enforce the uniform code; and

e. Provide for a uniform, statewide approach to the training and qualification of personnel engaged in the administration and enforcement of the uniform code.

(Added L.1981, c. 707, § 1.)

Historical and Statutory Notes

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Former § 371. Section, L.1951, c. 800, related to short title of article and was repealed by L.1981, c. 707, § 12.

Legislative Findings; Toxicity of Smoke and Gases; Study; Appropriations. L.1982, c. 552, §§ 1 to 3, eff. July 20, 1982, provided:

"Section 1. The legislature hereby finds that there is a growing concern regarding injuries and deaths related to the toxic behavior of certain building and furnishing materials when exposed to fire or high temperatures. The legislature further finds that model test methods exist for rating the toxicity of combustion products, but that no adequate program exists to improve upon and integrate such tests into the state uniform fire prevention and building code established pursuant to article eighteen of the executive law.

"§ 2. The secretary of state is hereby directed to conduct or have conducted a study of the toxicity of smoke and gases given off under various temperatures by materials used in building construction and furnishings. Such study shall assess the hazards from smoke and gases produced by the combustion of such materials, and the feasibility of developing or adopting a system of rating the toxicity of such materials, and shall result in the development of a set of recommendations to the state fire prevention and building code council established pursuant to section three hundred seventy-four of the executive law. Such recommendations shall be in the form of performance standards for various materials at various temperature conditions.

For purposes of effectuating this section, the secretary of state shall consider appropriate tests and standards as currently exist in the field of combustion toxicology. The secretary of state shall report the results of the study, together with his recommendations, to the governor and the legislature on or before June thirtieth, nineteen hundred eighty-three.

"§ 3. The sum of three hundred thousand dollars (\$300,000), or so much thereof as may be necessary, is hereby appropriated to the department of state out of any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated, for its expenses, including personal service, maintenance and operation, and travel in the state, in carrying out the provisions of this act."

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislature, section is not applicable to buildings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any provision of article 18 which is similar to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and Duties. Rights and remedies unimpaired by L.1981, c. 707, and all functions, powers, duties, rights and obligations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

Library References

American Digest System

Health regulations and offenses, see Health and Environment ⇨32.
Municipal corporations; building regulations, see Municipal Corporations ⇨601.

Encyclopedia

Health regulations in general; buildings, slum clearance, and public housing, see C.J.S. Health and Environment § 28 et seq.
Municipal corporations; building and zoning regulations in general, see C.J.S. Municipal Corporations § 224.
Municipal corporations; building regulations, see C.J.S. Municipal Corporations § 225.

WESTLAW Research

Health and environment cases: 199k[add key number].
Municipal corporations cases: 268k[add key number].

Notes of Decisions

**Building Inspections 2
Purpose 1**

1. Purpose

The primary purpose of the formulation of a building construction code was not to impose an unvarying duty for the protection of a particular class against a defined hazard, but to provide basic and uniform performance standards thereby reducing excessive construction costs. Major v. Waverly & Ogden, Inc., 1960, 7 N.Y.2d 332, 197 N.Y.S.2d 165, 165 N.E.2d 181.

Provisions of construction code, respecting manner in which building should be constructed, were not designed to protect a definite class of persons from a hazard of definable orbit, and in no way are analogous to §§ 200

and 240 of Labor Law providing for safeguards for workmen. Major v. Waverly & Ogden, Inc., 1959, 8 A.D.2d 380, 190 N.Y.S.2d 526, motion granted 7 N.Y.2d 745, 193 N.Y.S.2d 652, 162 N.E.2d 737, affirmed 7 N.Y.2d 332, 197 N.Y.S.2d 165, 165 N.E.2d 181.

2. Building Inspections

Under the principles of State sovereignty, a municipality may inspect housing owned by the State or one of its agencies only if the enabling statute so authorizes and a municipality may inspect federally owned housing if the federal statute so authorizes or provides that state and local governments shall retain civil and criminal jurisdiction over such property. Op.Ct.Compt. 81-250.

§ 372. Definitions

As used in this article, the following terms shall have the meaning ascribed to them, unless the context otherwise requires:

1. "Administrator" means the state fire administrator established pursuant to article six-C of this chapter.¹

2. "Areas of public assembly" means all buildings or portions of buildings used for gathering together fifty or more persons for amusement, athletic, civic, dining, educational, entertainment, patriotic, political, recreational, religious, social, or similar purposes,

the entire fire area of which they are a part, and the means of egress therefrom.

3. "Building" means a combination of any materials, whether portable or fixed, having a roof, to form a structure affording shelter for persons, animals or property. The word "building" shall be construed when used herein as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. The term "building" shall also mean "factory manufactured home" and "mobile home". The term "building" shall not include a "temporary greenhouse".

4. "Commissioner" means the commissioner of the division of housing and community renewal.

5. "Construction" means the construction, reconstruction, alteration, conversion, repair, installation of equipment or use of buildings, and requirements or standards relating to or affecting materials used in connection therewith, including provisions for safety and sanitary conditions.

6. "Council" means the state fire prevention and building code council created by this article.

7. "Department" means the department of state.

8. "Division" means the division of housing and community renewal in the executive department.

9. "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, refrigerating equipment, elevators, dumb waiters, escalators and other mechanical additions or installations.

10. "Factory manufactured home" means a structure designed primarily for residential occupancy constructed by a method or system of construction whereby the structure or its components are wholly or in substantial part manufactured in manufacturing facilities, intended or designed for permanent installation, or assembly and permanent installation, on a building site.

11. "Fire area" means the floor area of a story of a building within exterior walls, party walls, fire walls, or any combination thereof.

12. "Fire protection equipment and systems" means apparatus, assemblies, or systems, either portable or fixed, for use to detect, prevent, control, or extinguish fire.

13. "Local government" means a village, town (outside the area of any incorporated village) or city.

14. "Means of egress" means a continuous unobstructed way of exit from any point in a building or structure to a public way. A means of egress comprises the vertical and horizontal ways of travel and includes intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, escalators, horizontal exits, courts, and yards.

15. "Mobile home" means a moveable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed and constructed without a permanent foundation for year-round living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. "Mobile home" shall mean units designed to be used exclusively for residential purposes, excluding travel trailers.

16. "Office" means the office of fire prevention and control created pursuant to article six-C of this chapter.

17. "Secretary" means the secretary of state.

18. "State agency" means any department, bureau, commission, board, public authority or other agency of the state, including any public benefit corporation any member of whose board is appointed by the governor.

19. "Temporary greenhouse" means specialized agricultural equipment having a framework covered with demountable polyurethane materials or materials of polyurethane nature and lacking a permanent and continuous foundation, which is specifically designed, constructed and used for the culture and propagation of horticultural commodities. A "temporary greenhouse" may include, but is not limited to, the use of heating devices, water and electrical utilities, and supporting poles embedded in non-continuous concrete. In no instance will a temporary greenhouse be used for the retail sale of any farm or non-farm products.

20. "Uniform code" or "code" means the New York state uniform fire prevention and building code promulgated pursuant to section three hundred seventy-seven of this article.

(Added L.1981, c. 707, § 1; amended L.1992, c. 496, §§ 1, 2.)

¹§ 155 et seq.

Historical and Statutory Notes

1992 Amendments. Subd. 3. L.1992, c. 496, § 1, eff. July 17, 1992, excluded temporary greenhouses from definition of "building".

Subd. 19. L.1992, c. 496, § 2, eff. July 17, 1992, added subd. 19 and redesignated former subd. 19 as 20.

Subd. 20. L.1992, c. 496, § 2, eff. July 17, 1992, redesignated former subd. 19 as 20.

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Former § 372. Section, L.1951, c. 800; amended L.1951, c. 580, § 3; L.1954, c. 166, § 1; L.1961, c. 197, § 2, related to definitions and was repealed by L.1981, c. 707, § 12.

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislature, section is not applicable to buildings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any provision of article 18 which is similar to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and Duties. Rights and remedies unimpaired by L.1981, c. 707, and all functions, powers, duties, rights and obli-

gations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

References to State Building Construction Code, State Building Conservation and Fire Prevention Code, State Building Code Council, State Building Construction Board of Review, and Division and Commissioner of Housing and Community Renewal. L.1981, c. 707, § 4, eff. Jan. 1, 1984, provided: "Whenever the state building construction code, the state building conservation and fire prevention code, the state building code council, the state building construction board of review, the division of housing and community renewal or the commissioner thereof is referred to or designated in any general, special or local law, other than article eighteen of the executive law as added by section one of this act [L.1981, c. 707], or in any rule, regulation, executive order, contract or other document such reference shall be deemed to refer to the New York state uniform fire prevention and building code, the state fire prevention and building code council, the department of state or the secretary of state for purposes of the implementation of the New York state uniform fire prevention and building code act as contained in article eighteen of the executive law as added by section one of this act [this article]."

Cross References

Commissioner and division of housing and community renewal, see § 260; Public Housing Law §§ 11, 14, 16 and 19. Department and secretary of state, see § 90. State fire administrator, see § 155.

New York Codes, Rules and Regulations

Facilities for physically handicapped, see 9 NYCRR Part 1100 et seq. Fire safety in areas of public assembly, see 19 NYCRR Part 430. Standards for factory manufactured homes, see 9 NYCRR Part 1210 et seq. State code for mobile homes, see 9 NYCRR Part 1220 et seq.

Library References

American Digest System

State government and officers; establishment of executive departments or boards, see States ¶45.

Encyclopedia

State government and officers; creation and abolition of offices and positions, see C.J.S. States § 82.

WESTLAW Research

States cases: 360k[add key number].

Notes of Decisions

Buildings within section 1

1. Buildings within section

Swimming pool was not "building" as defined in Fire Prevention and Building Code Act, and, thus, pool built before

effective date of act was not exempt from fence enclosure requirement; exemption applied only to buildings constructed or under construction prior to effective date. *Tarquini v. Town of Aurora*, 1991, 77 N.Y.2d 354, 568 N.Y.S.2d 538, 570 N.E.2d 186, on remand 171 A.D.2d 1001, 569 N.Y.S.2d 222.

§ 373. Required immediate applicability of existing state codes

1. The state building construction code provided for in article eighteen of this chapter, as added by chapter eight hundred of the laws of nineteen hundred fifty-one¹ and the state building conservation and fire prevention code provided for in article eighteen-A of this chapter² shall be applicable from and after the first day of March, nineteen hundred eighty-two in every local government that does not on such date have in effect a building or fire protection code. Said state building construction code and state building conservation and fire prevention code shall also be applicable in every local government that on the first day of March, nineteen hundred eighty-two has a building or fire prevention code in effect but which prior to the first day of January, nineteen hundred eighty-four, repeals such code, provided, however, that in the case of any such repeal, the state building construction code and the state building conservation and fire prevention code shall apply within such local government from and after the date of such repeal.

2. The secretary shall, within thirty days after the effective date of this article, notify the elective or appointive chief executive officer or, if there be none, the chairman of the legislative body of each local government and county of the provisions of this section.

3. The secretary shall, within ninety days after the effective date of this article, promulgate regulations establishing minimum stan-

dards for administration and enforcement of the state building construction code and the state building conservation and fire prevention code by local governments to which this section applies.

4. Within sixty days after the effective date of the regulations required by subdivision three of this section the elective or appointive chief executive officer of each local government to which this section applies shall report in writing to the executive or appointive chief executive officer or, if there be none, the chairman of the county legislative body of the county in which the local government is situated, the measures it has taken or contemplates taking for administration and enforcement of the state building construction code and the state building conservation and fire prevention code.

5. Within one hundred twenty days after the effective date of the regulations required by subdivision three of this section the elective or appointive chief executive officer or, if there be none, the chairman of the county legislative body shall forward to the secretary the reports of the local governments required by subdivision four of this section together with a report of the measures such county or local government has taken or contemplates taking for administration and enforcement of the state building construction code and the state building conservation and fire prevention code.

6. On and after the first day of March, nineteen hundred eighty-two, the provisions of subdivisions three, four and five of section three hundred eighty-one of this article shall immediately apply to the administration and enforcement of the state building construction code and the state building conservation and fire prevention code by every local government in which such codes have been made applicable pursuant to this section.

(Added L.1981, c. 707, § 1.)

¹ Former §§ 370 to 387.

² Former §§ 390 to 399.

Historical and Statutory Notes

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Former § 373. Section, added L.1961, c. 197, § 4; amended L.1970, c. 175; L.1974, c. 824, § 1; L.1978, c. 502, § 1, related to state building code council and was repealed by L.1981, c. 707, § 12.

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislation, section is not applicable to build-

ings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any provision of article 18 which is similar to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and Duties. Rights and remedies unim-

paired by L.1981, c. 707, and all functions, powers, duties, rights and obligations under act transferred to secretary and department of state and divi-

sion of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

Cross References

- Counties described, see Consolidators' Notes on State Law.
- County chief executives, see Alternative County Government Law § 150 et seq.
- County legislative bodies, see Alternative County Government Law § 100 et seq.; County Law § 150 et seq.
- Municipal chief executive, see Town Law §§ 20, 29, 52; Village Law §§ 3-301, 4-400.
- Municipal legislative body, see Town Law §§ 20, 51, 60 et seq.; Village Law §§ 3-301, 4-412.

New York Codes, Rules and Regulations

- Minimum standards for administration and enforcement of the state building construction code and the state building conservation and fire prevention code, see 19 NYCRR Part 429.
- State building construction code, see 9 NYCRR Part 650 et seq.
- State fire prevention code, see 9 NYCRR Part 1150 et seq.
- State uniform fire prevention and building code, see 9 NYCRR Part 600 et seq.

Library References

American Digest System

- Health regulations and offenses, see Health and Environment ¶32.
- Municipal corporations; building regulations, see Municipal Corporations ¶601.

Encyclopedia

- Health regulations in general; buildings, slum clearance, and public housing, see C.J.S. Health and Environment § 28 et seq.
- Municipal corporations; building and zoning regulations in general, see C.J.S. Municipal Corporations § 224.
- Municipal corporations; building regulations, see C.J.S. Municipal Corporations § 225.

WESTLAW Research

- Health and environment cases: 199k[add key number].
- Municipal corporations cases: 268k[add key number].

Notes of Decisions

**Law governing 1
Local regulations 2**

1. Law governing

In the area where both the Industrial Code and the State Building Code are applicable, i.e., municipal property not

used in the performance of governmental functions, and where their provisions are inconsistent, the State Building Code would control. 1974, Op.Atty.Gen. (Inf.) 267.

In municipalities where it is operative and for buildings to which it is applicable, the State Building Construction

§ 373

Note 1

Code included in this article is a proper alternative to other State and local building regulations in cases where a building is constructed pursuant to the Code as against such other regulations. 1955, Op.Atty.Gen. 261.

The State Building Conservation and Fire Prevention Code [this article] is mandatorily applicable until Jan. 1, 1984 in a town which had not adopted a fire prevention code as of July 1, 1981, the effective date of the New York State Uniform Fire Prevention and Building Code Act [article 18], and another fire prevention code may not be enacted in lieu thereof. Op. State Compt. 83-151.

2. Local regulations

Where strict compliance with State standards for fire safety in areas of pub-

§ 374. State fire prevention and building code council

1. There is hereby created and established in the division of housing and community renewal a council, to be known as the state fire prevention and building code council. Such council shall consist of the commissioner of housing and community renewal, as chairman, the state fire administrator and fifteen other members to be appointed as follows:

a. Two members, to be appointed by the governor, from among the commissioners of the departments of commerce, correctional services, education, health, labor, mental health and social services, offices of energy and general services, and the superintendent of insurance.

b. Six members, to be appointed by the governor, one of whom shall be an elected official of a city with a population over one million, one of whom shall be an elected official of another city with a population over one hundred thousand, one of whom shall be an elected official of any other city, one of whom shall be an elected county official, one of whom shall be an elected town official, and one of whom shall be an elected village official.

c. Seven members, to be appointed by the governor with the advice and consent of the senate, one of whom shall be a fire service official, one of whom shall be a registered architect, one of whom shall be a professional engineer, one of whom shall be a code enforcement official, one of whom shall represent builders, one of whom shall represent trade unions, and one of whom shall be a person with a disability as defined in section two hundred ninety-two of this chapter who would directly benefit from the provisions

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lic assembly would entail widespread practical difficulties or unnecessary hardship, the Secretary of State is authorized to vary these requirements by approving in their place locally adopted regulations that are equally safe and proper alternatives. Op.Atty.Gen. (Inf.) 82-82.

As a general rule a municipality in the exercise of its governmental, as distinguished from its proprietary functions, is not bound by its own municipal building code. 1980, Op.Atty.Gen. (Inf.) Dec. 2.

The Auburn Industrial Development Authority is not required to meet the minimum requirements of the state building code and minimum fire standards. 1980, Op.Atty.Gen. (Inf.) Mar. 24.

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of article thirteen of the state uniform fire prevention and building code. The registered architect and professional engineer shall be duly licensed to practice their respective professions in the state of New York. After the certification of code enforcement personnel pursuant to this chapter shall have begun said code enforcement official shall be so certified.

[d. Repealed]

2. The members of the council, other than the ex-officio members, shall serve for terms of four years provided, however, that any member appointed pursuant to paragraph b of subdivision one of this section shall cease to be a member of the council when such member no longer holds the elective office which made such member eligible to appointment under such paragraph. Such terms shall commence on April first and expire on March thirty-first provided, however, that of the members first appointed pursuant to paragraph b of subdivision one of this section, three shall be appointed for terms of four years and three for a term of two years, of the members first appointed pursuant to paragraph c of subdivision one of this section, three shall be appointed for terms of four years and three for a term of two years, and the member first appointed pursuant to paragraph d of subdivision one of this section shall be appointed for a term of four years. Vacancies shall be filled for unexpired terms in the same manner as the original appointments.

3. The council shall meet at least quarterly at the call of the chairman. Additional meetings may be called upon at least five days notice by the chairman or by petition of five members of the council.

4. No member of the council shall be disqualified from holding any other public office, nor shall employment be forfeited by reason of the member's appointment hereunder, notwithstanding the provisions of any general, special or local law, ordinance, county or city charter.

5. Each member of the council, other than a full-time government official, shall receive per diem compensation at the rate of one hundred fifty dollars per day for each day spent in the performance of his duties. All members of the council shall receive actual and necessary expenses incurred in the performance of their duties.

6. The governor may remove any member for inefficiency, neglect of duty or misconduct in office after giving him a copy of the charges against him and an opportunity to be heard, in person or

by counsel in his defense, upon not less than ten days notice. If any member shall be so removed, the governor shall file in the office of the secretary of state a complete statement of charges made against¹ such member, and his finding thereon, together with a complete record of the proceedings.

7. The ex-officio members of the council and the elected county and local government official members appointed pursuant to paragraph b of subdivision one of this section may, by official authority filed in their respective agencies, county or local governments and with the commissioner, designate a deputy or other officer of their respective agency, county or local government to exercise their powers and perform their duties on the council; provided, however such authority shall not apply to votes on approval of or amendment of the uniform code.

8. The council may create such subcommittees as it may from time to time deem appropriate to provide it with advice and recommendations concerning the performance of its duties under this article.

9. a. The chairman of the council shall appoint an advisory board on assistive listening systems in places of public assembly for the purposes of providing the full council with recommendations for standards for such systems. Such advisory board shall consist of the state fire administrator, who shall serve as chairman, and six other members to be appointed as follows:

(i) three members from among the members of the state fire prevention and building code council,

(ii) three members one of whom shall represent an organization which serves as an advocate for the hearing impaired, one of whom shall represent consumers of products designed for the hearing impaired, and one of whom represents an institution of higher education with expertise in the area of assistive listening technology, who shall be entitled to be reimbursed for necessary travel and incidental expenses out of monies appropriated to the division of housing and community renewal.

b. Such advisory board shall, prior to December thirty-first, nineteen hundred eighty-nine, submit to the state fire prevention and building code council:

(i) findings on the extent of existing federal, state and local requirements for assistive listening systems,

(ii) findings on the type, design and use of existing assistive listening systems,

(iii) recommendations for design and installation standards for assistive listening systems intended for places of public assembly, and

(iv) recommendations for capacity standards for places of public assembly which shall be required to install assistive listening systems.

c. In developing such recommendations the advisory board shall take into consideration the costs of such systems, the standardization and compatibility of such systems, if the technology permits, and the utilization of such systems by the hearing impaired consumer. Particular attention should be given to the ability of consumers to utilize a single receiver which is compatible in a variety of installations employing the same assistive listening device technology.

d. In addition, the advisory board shall ensure, to the extent possible, that the standards developed for the design and installation of assistive listening systems take into consideration the opportunity for competition among manufacturers of the same or various approved systems.

(Added L.1981, c. 707, § 1; amended L.1982, c. 208, § 1; L.1985, c. 920, §§ 1, 2; L.1988, c. 295, § 2; L.1989, c. 23, § 1.)

¹So in original. Probably should read "against".

Historical and Statutory Notes

1989 Amendments. Subd. 9, par. a. L.1989, c. 23, § 1, eff. Mar. 31, 1989, in subpars. (i) and (ii), deleted reference to appointment by the chairman of the advisory board and in subpar. (ii) and inserted reference to reimbursement of members' travel and incidental expenses from monies appropriated to the division of housing and community renewal.

Subd. 9, par. b. L.1989, c. 23, § 1, eff. Mar. 31, 1989, extended to Dec. 31, 1989 from Mar. 31, 1989, the date by which certain findings are to be submitted.

1988 Amendments. Subd. 9. L.1988, c. 295, § 2, added subd. 9. See Effective Date of Amendment by L.1988, c. 295 note below.

1985 Amendments. Subd. 1, par. (c). L.1985, c. 920, § 1, increased council membership to seven from six by adding disabled person. See Effective Date of Amendment by L.1985, c. 920 note below.

Subd. 1, par. (d). L.1985, c. 920, § 2, repealed former par. (d) which authorized the appointment of an "at-large" member by the Governor. See Effective Date of Amendment by L.1985, c. 920 note below.

1982 Amendments. Subd. 2. L.1982, c. 208, § 1, eff. June 15, 1982, in sentence beginning "Such terms" substituted "three" for "two" and "the member first appointed pursuant to paragraph d of subdivision one of this section shall be appointed for a term of four years" for "the members first appointed pursuant to paragraph d of subdivision one of this section, one shall be appointed for a term of four years and one for a term of two years".

Effective Date of Amendment by L.1988, c. 295. Section 5 of L.1988, c. 295; amended L.1989, c. 23, § 5, eff. Mar. 31, 1989, provided: "This act shall take effect immediately [July 25, 1988]."

Effective Date of 1985 Amendment; Continuation in Office of At-Large Member. Section 3 of L.1985, c. 920, provided. "This act [amending this section] shall take effect immediately [Eff. Dec. 20, 1985] provided, however, that the at large member of the state fire prevention and building code council appointed and serving pursuant to the provisions of paragraph d of subdivision one of section three hundred seventy-four of the executive law on the effective date of this act may continue to serve until the expiration of the term for which he was appointed, and the first member of such council appointed by the governor pursuant to the increase from six to seven as provided for in paragraph c of subdivision one of such section shall be appointed upon the occurrence of a vacancy in such at large member's office or upon the expiration of such at large member's term, whichever occurs first."

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Former § 374. Section, L.1951, c. 580, § 4; L.1961, c. 197, § 5, related to purpose of state building code council and was repealed by L.1981, c. 707, § 12.

Legislative Intent of L.1988, c. 295. L.1988, c. 295, § 1; amended L.1989, c. 23, § 4, eff. Mar. 31, 1988, provided: "It is the intent of the legislature that the New York state uniform fire prevention and building code contain standards for the purchase and installation of assistive listening systems for use by persons with hearing impairments in certain facilities which are open to the general public. The installation of an assistive listening system is of benefit to a person with a hearing impairment who has difficulty hearing in large groups, at a distance or in a noisy environment. These systems improve listening ability by bringing the voice of the speaker into the ear of the hearing impaired person. In that way, speech is made louder than environmental noises. The chairman of the state fire prevention and building code council shall appoint an advisory board on assistive listening systems in places of public assembly for the purpose of providing the full council with recommendations for standards for such systems. Such advisory board shall be made up of

representatives who serve as advocates for the hearing impaired, consumers of products designed for the hearing impaired and institutions of higher education with expertise in the area of assistive listening device technology, along with members of the full state fire prevention and building code council. The advisory board is charged with, prior to December thirty-first, nineteen hundred eighty-nine, submitting to the full council recommendations for standards for assistive listening systems for places of public assembly. In developing such standards, the advisory board shall take into consideration the costs of such systems, the standardization and compatibility of such system, if such technology permits, and the utilization of such systems by the hearing impaired consumer. Particular attention should be given to the ability of consumers to utilize a single receiver which is compatible in a variety of installations employing the same assistive listening device technology."

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislature, section is not applicable to buildings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any provision of article 18 which is similar to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and Duties. Rights and remedies unimpaired by L.1981, c. 707, and all functions, powers, duties, rights and obligations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

Energy Efficiency Construction Code. Section 3 of L.1974, c. 824, eff. June 7, 1974, as amended L.1978, c. 397, § 6, eff. June 19, 1978, provided that:

"§ 3. The department of public service and all other state departments, agencies and offices shall render such technical assistance in the preparation of

the energy efficiency construction code as the building code council may reasonably request."

Cross References

- Assistive listening devices in public buildings, see Legislative Law § 7-e; Public Buildings Law, §§ 3, 53.
- Commissioner of correctional services, see Correction Law § 5.
- Commissioner of education, see Education Law § 301 et seq.
- Commissioner of economic development (formerly commerce), see Economic Development Law § 100.
- Commissioner of energy, see Energy Law § 5-101 et seq.
- Commissioner of general services, see § 200.
- Commissioner of health, see Public Health Law § 200 et seq.
- Commissioner of housing and community renewal, see § 260, Public Housing Law §§ 11, 14, 16, 19.
- Commissioner of labor, see §§ 10, 21.
- Commissioner of mental health, see Mental Hygiene Law § 5.03.
- Commissioner of social services, see Social Services Law §§ 11, 17.
- Creation and filling of vacancies, see Public Officers Law § 30 et seq.
- Division of housing and community renewal, see § 260.
- Expenses of public officials, see Public Officers Law § 64.
- Multiple offices, when permitted, see Canal Law § 110; Economic Development Law § 106; General City Law § 3; N.Y.City Crim.Ct. Act § 94.
- Person with a disability, defined, see § 292(21).
- Professional engineers, see Education Law § 7200 et seq.
- Registered architects, see Education Law § 7300 et seq.
- Secretary of state, see § 90.
- State fire administrator, see § 155.
- Superintendence of executive branch by governor, see § 6.
- Superintendent of insurance, see Insurance Law § 201.

Library References

American Digest System

- Health regulations and offenses, see Health and Environment ⇨32.
- Municipal corporations; building regulations, see Municipal Corporations ⇨601.
- State government and officers; establishment of executive departments or boards, see States ⇨45.

Encyclopedia

- Health regulations in general; buildings, slum clearance, and public housing, see C.J.S. Health and Environment § 28 et seq.
- Municipal corporations; building and zoning regulations in general, see C.J.S. Municipal Corporations § 224.
- Municipal corporations; building regulations, see C.J.S. Municipal Corporations § 225.
- State government and officers; creation and abolition of offices and positions, see C.J.S. States § 82.

WESTLAW Research

Health and environment cases: 199k[add key number].
Municipal corporations cases: 268k[add key number].
States cases: 360k[add key number].

§ 375. Powers of the council

The council is authorized and empowered: 1. To subpoena witnesses, take testimony, compel production of books and records and to hold public hearings. The commissioner may designate one or more members of the council, or one or more officers or employees of the division, or the administrator, on request of the commissioner, may designate one or more employees of the office, to hold public hearings and report on such hearings to the council.

2. To study the operation of the uniform fire prevention and building code, local regulations and other laws relating to the construction of buildings and the protection of buildings from fire to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health, safety and security, particularly as such provisions relate to the protection of life and property from the dangers of fire.

3. To recommend tests and approvals or to require the testing and approval of materials, devices and methods of construction to ascertain their acceptability under the requirements of the uniform fire prevention and building code.

4. To advise and assist the commissioner in carrying out the provisions and purposes of this article and to make recommendations concerning the program and activities of the division and appointments to be made by the commissioner in connection with the uniform fire prevention and building code.

5. To make and establish and, from time to time, alter and amend rules for the organization and internal management of the council, and for such other purposes as may be necessary, desirable or proper in carrying out its powers and duties under this article.

6. To avoid duplication of effort and in the interest of economy, the council may make use of existing studies, surveys, plans, data and other materials in the possession of any state agency. Each such agency is hereby authorized and directed to make the same available to the council and otherwise to assist it in the performance of its functions. The officers and personnel of such agencies may serve at the request of the council upon such advisory committees as the council shall determine to create and such officers and personnel may serve upon such committees without forfeiture of

office or employment and with no loss or diminution in the compensation, status, rights and privileges which they otherwise enjoy. (Added L.1981, c. 707, § 1.)

Historical and Statutory Notes

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Derivation. Former § 378, L.1951, c. 800; amended L.1961, c. 197, § 9, repealed by L.1981, c. 707, § 12.

Former § 375. Section 375, L.1951, c. 800, amended L.1951, c. 580, § 6, related to code standards and was repealed by L.1980, c. 707, § 12.

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislature, section is not applicable to buildings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any

provision of article 18 which is similar to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and Duties. Rights and remedies unimpaired by L.1981, c. 707, and all functions, powers, duties, rights and obligations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

Cross References

Forfeiture of office, see § 63-a; Civil Rights Law § 79.
Multiple offices permitted, see Canal Law § 110; Economic Development Law § 106; General City Law § 3; N.Y.City Crim.Ct. Act § 94.
Subpoenas, see CPLR 2301 et seq.

Library References

American Digest System

Health regulations and offenses, see Health and Environment ⇨32.
Municipal corporations; building regulations, see Municipal Corporations ⇨601.

Encyclopedia

Health regulations in general; buildings, slum clearance, and public housing, see C.J.S. Health and Environment § 28 et seq.
Municipal corporations; building and zoning regulations in general, see C.J.S. Municipal Corporations § 224.
Municipal corporations; building regulations, see C.J.S. Municipal Corporations § 225.

WESTLAW Research

Health and environment cases: 199k[add key number].
Municipal corporations cases: 268k[add key number].

Notes of Decisions

Local application of code 1

1. Local application of code

Should the town of Mamaroneck adopt the State Building Construction Code, all standards, requirements, rules and regulations promulgated or adopted

by the State Building Code Council would pertain to the town, unless the State Building Code Council, pursuant to provisions of this section, limited their application or portions thereof to specified classes or types of buildings or to an area wherein the town of Mamaroneck is situated. 1969, Op.Atty.Gen. (Inf.) 46.

§ 376. Powers of the commissioner

The commissioner is authorized and empowered: 1. To assign to the council such officers and employees of the division as he may deem necessary from time to time to assist the council in carrying out its functions and duties under this article.

2. To appoint experts, consultants, technical advisers and advisory committees for assistance and recommendations relative to the formulation and adoption of the uniform fire prevention and building code and to assist the council and the commissioner in carrying out the purposes of this article.

3. To authorize or provide for the testing and approval of materials, devices and methods of construction.

4. To issue and to publish or cause to be published written interpretations of the uniform code upon written request of a permit applicant or an official responsible for the administration and enforcement of the provisions of such code. Subsequent enforcement of such code shall be consistent with such written interpretations.

5. To do all things necessary or desirable to further and effectuate the general purposes and specific objectives of this article. (Added L.1981, c. 707, § 1; amended L.1988, c. 496, § 1.)

Historical and Statutory Notes

1988 Amendments. L.1988, c. 496, § 1, eff. Aug. 31, 1988, authorized the commissioner to publish written interpretations of the uniform code.

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Derivation. Former § 378-a, added L.1961, c. 197, § 10; amended L.1972, c. 766, § 1, and repealed by L.1981, c. 707, § 12.

Former § 376. Section, L.1951, c. 800, amended L.1961, c. 197, § 7, related

to limits on applicability and was repealed by L.1981, c. 707, § 12.

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislature, section is not applicable to buildings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any provision of article 18 which is similar to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant

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ant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and Duties. Rights and remedies unimpaired by L.1981, c. 707, and all func-

tions, powers, duties, rights and obligations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

Library References

American Digest System

State government and officers; duties of particular officers and services and performance thereof, see States ¶73.

Encyclopedia

State government and officers; powers, functions, and duties of particular officers, agents, and employees, see C.J.S. States § 130 et seq.

WESTLAW Research

States cases: 360k[add key number].

§ 377. New York state uniform fire prevention and building code

1. The council shall formulate a uniform fire prevention and building code which shall take effect on the first day of January, nineteen hundred eighty-four. The council may from time to time amend particular provisions of the uniform code and shall periodically review the entire code to assure that it effectuates the purposes of this article and the specific objectives and standards hereinafter set forth. The commissioner shall conduct public hearings on said uniform code and any amendment thereto. The secretary shall review such code or amendment, together with any changes incorporated by the council as a result of such hearings, to insure that it effectuates the purposes of this article. Upon being so satisfied, the secretary shall approve said code or amendment prior to its becoming effective.

2. The uniform fire prevention and building code shall:

a. provide reasonably uniform standards and requirements for construction and construction materials for public and private buildings, including factory manufactured homes, consonant with accepted standards of engineering and fire prevention practices;

b. formulate such standards and requirements, so far as may be practicable, in terms of performance objectives, so as to make adequate performance for the use intended the test of acceptability;

c. permit to the fullest extent feasible, use of modern technical methods, devices and improvements which tend to reduce the cost

of construction without substantially affecting reasonable requirements for the health, safety and security of the occupants or users of buildings;

d. encourage, so far as may be practicable, the standardization of construction practices, methods, equipment, material and techniques; and

e. eliminate restrictive, obsolete, conflicting and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs or retard unnecessarily the use of new materials, or provide unwarranted preferential treatment to types or classes of material or products or methods of construction. (Added L.1981, c. 707, § 1; amended L.1986, c. 772, § 2.)

Historical and Statutory Notes

1986 Amendments. Subd. 2, par. a. L.1986, c. 772, § 2, eff. Aug. 2, 1986, substituted "standards" for "standard" and inserted "including factory manufactured homes".

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Former § 377. Section, L.1951, c. 800; amended L.1951, c. 580, § 7; L.1961, c. 197, § 8, related to rules and regulations and was repealed by L.1981, c. 707, § 12.

Legislative Findings and Purpose of L.1986, c. 772. L.1986, c. 772, § 1, eff. Aug. 2, 1986, provided: "The legislature hereby finds and declares that, in an effort to meet the housing needs within the state of New York, the private housing and construction industry has developed mass production techniques which can substantially reduce housing construction costs, and that the mass production of housing presents unique problems with respect to the establishment of uniform health and safety standards and inspection procedures. The legislature further finds and declares that, by adopting uniform standards for factory manufactured homes, it is dem-

onstrating its intention to encourage new and improved technology, techniques, methods and materials to increase the available supply of housing, to reduce housing construction costs and to make home ownership more feasible for all residents of the state."

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislature, section is not applicable to buildings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any provision of article 18 which is similar to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and Duties. Rights and remedies unimpaired by L.1981, c. 707, and all functions, powers, duties, rights and obligations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

New York Codes, Rules and Regulations

Uniform fire prevention and building code, see 9 NYCRR Part 600 et seq.

Library References

American Digest System

State government and officers; authority and powers of executive departments, boards, or other bodies, and exercise thereof, see States ¶67.

Encyclopedia

State government and officers; powers, functions, and duties of particular officers, agents, and employees, see C.J.S. States § 130 et seq.

WESTLAW Research

States cases: 360k[add key number].

§ 378. Standards for New York state uniform fire prevention and building code

The uniform code shall address the following subjects:

1. Standards for the construction of all buildings or classes of buildings, or the installation of equipment therein, including standards for materials to be used in connection therewith, and standards for safety and sanitary conditions.
2. Standards for the condition, occupancy, maintenance, conservation, rehabilitation and renewal of certain existing buildings, structures and premises and for the safeguarding of life and property therein and thereabout from the hazards of fire, explosion or release of toxic gases arising from the storage, handling or use of combustible or hazardous substances, materials or devices.
3. Standards for passenger elevators to promote uniformity and ease of use for the handicapped including, but not limited to:
 - a. placement and identification of operating controls,
 - b. door jamb markings,
 - c. operation and leveling features,
 - d. operation, width, and safety features for doors,
 - e. hall buttons, and
 - f. hall lanterns.
4. Standards for areas of public assembly requiring:
 - a. approved fire protection equipment and systems shall be installed;
 - b. interior finishes shall be of appropriate grade to materially retard the spread of smoke and flame, taking into consideration the fire protection equipment and systems in place, and shall be maintained in that condition;
 - c. no combustible material shall be placed in such amounts and locations as would cause existing fire protection equipment and

systems to be substantially overburdened, nor shall any material be placed in such manner as would cause safe exit to be significantly impeded; and

d. incorporation of the retroactivity provisions of article eighteen-AA of this chapter.¹

The standards shall include provisions for the type, number, spacing and location of fire protection equipment and systems, the classification and maintenance of interior finishes, and the accumulation of materials.

e. For buildings included in group C5 of paragraph (f) of section 900.2 of title nine of the official compilation of codes, rules and regulations of the state of New York, that water closets and urinals provided for occupants, based upon capacity, shall be deemed sanitary fixtures and shall be distributed on a basis such that the number of such sanitary fixtures provided in rest facilities for men shall be equal to the number of water closets provided in rest facilities provided for women in buildings with an occupancy of four hundred or less. For buildings consisting of more than four hundred occupants, an additional water closet shall be added to a rest facility provided for women for each sanitary fixture added to a similarly situated rest facility provided for men.

5. [See, also, subs. 5 below.] Standards for hotels, motels and lodging houses, requiring that a notice be posted in a prominent place in each guest room, including but not limited to the following information:

- a. location of nearest exits and fire alarms;
- b. procedures to be followed when the fire or smoke detector gives warning; and
- c. procedures to be followed in the event of fire or smoke development.

5. [See, also, subs. 5 above and below.] Standards for inspections of solid fuel burning heating appliances, chimneys and flues requiring:

- a. prior to the installation of any solid fuel burning heating appliance, chimney or flue in any dwelling used as a residence, the owner thereof, or his agent, shall first secure a building permit from the appropriate local government official;
- b. an appropriate and qualified inspector, as determined by the local government, shall cause an inspection to be made of the solid fuel burning heating appliance, chimney or flue at a time when such inspection will best determine conformity of such installation

with the uniform code, provided, however, that the local government official may waive such inspection for good cause shown;

c. upon approval of such installation, the appropriate local government official shall issue a certificate evidencing compliance with the appropriate provisions of the uniform code;

d. no owner of any dwelling used as a residence shall operate, or cause to be operated, any solid fuel burning heating appliance until such installation, including chimney and flue, has been approved and a certificate indicating such approval obtained from the appropriate local government official;

e. in the event of an accidental fire, requiring the services of a fire department, in a solid fuel burning heating appliance, chimney or flue, the chief of the fire department so responding may issue a temporary thirty day certificate indicating substantial conformity with the uniform code, until such time as an official inspector, as determined by local law, or in the case of a locality that relies on state inspection, a state inspector, shall cause an inspection to be made and a certificate to be issued indicating conformity of such solid fuel burning heating appliance, chimney or flue with the uniform code;

f. the issuance of such certificate of compliance shall not be deemed to give rise to any claim or cause of action for damages against the local government or local official for damages resulting from operation or use of such solid fuel burning heating appliance, chimney or flue;

g. the local government in which such property is located may establish and collect a reasonable fee for such inspection from the owner of such property or his agent;

h. any violation of this subdivision shall be deemed a violation and be punishable by a fine not to exceed two hundred fifty dollars;

i. notwithstanding the foregoing provisions of this subdivision, in the event of an emergency, where a delay occasioned by the requirement of securing a building permit could reasonably be expected to cause irreparable² damage to the property or serious personal injury to the occupants or other person, the owner or his agent may commence such installation without first obtaining such building permit provided application therefore³ is filed within three business days after such work is commenced.

5. [See, also, subs. 5 above.] Standards for installation of single station smoke detecting alarm devices requiring that:

a. every one or two-family dwelling or any dwelling accommodation located in a building owned as a condominium or cooperative in the state used as a residence shall have installed an operable single station smoke detecting alarm device or devices,

b. such device or devices shall be installed in an area so that it is clearly audible in each bedroom or other room used for sleeping purposes, with intervening doors closed, in accordance with rules to be promulgated by the council,

c. such device or devices shall be in compliance with the uniform code, provided, however, that for purposes of this subdivision, battery operated devices shall be permitted,

d. upon conveyance of any real property containing a one or two-family dwelling or a condominium unit used as a residence and the transferor of the shares allocated to an apartment located in a building owned by a cooperative housing corporation where such apartment is used as a residence, the grantor shall deliver to the grantee at the time of conveyance an affidavit indicating that the grantor is in compliance with this subdivision. The grantee shall have ten days from the date of conveyance within which to notify the grantor if the alarm or alarms are not operable. Upon notification, the transferor shall bear any cost of compliance with the provisions of this subdivision,

e. notwithstanding any other provision of law, a failure to comply with the provisions of this subdivision shall not be a breach of any warranty in a conveyance of real property, nor shall it be a defense to any claim made under a policy of insurance issued to insure the property against fire or other casualty loss.

6. Standards for the use of lead in water supply systems constructed or portions added on or after January first, nineteen hundred eighty-six, including limiting the amount of lead in solder which may be utilized in piping to convey potable water to not more than two-tenths of one percent.

7. Standards for the construction of water supply systems which shall prohibit the use of asbestos cement pipe to convey potable water for any new or modified construction on or after January first, nineteen hundred ninety-two.

8. Standards for hotels, motels and lodging houses requiring (in addition to any other requirement) portable smoke-detecting alarm devices for the deaf and hearing impaired of audible and visual design, available for three percent of all units available for occupancy, with a minimum of one unit. If any other law or regulation requires a central, closed circuit interior alarm system, such device

shall be incorporated into or connected to the system so as to be capable of being activated by the system. Incorporation into the existing system shall be in lieu of the portable alarms. Standards shall require operators of any such establishment to post conspicuously at the main desk or other similar station a notice in letters at least three inches in height stating that smoke-detector alarm devices for the deaf and hearing impaired are available. The council shall mandate by rule and regulation the specific design of the smoke-detector alarm devices.

9. Standards for buildings (designated as "Group B3-senior citizens" in regulations promulgated pursuant to the New York state uniform fire prevention and building code act) housing senior citizens, intended primarily for persons sixty-two years old or more, who are in good physical condition and do not require physical assistance, requiring that a notice be posted in a prominent place in each residential unit, including but not limited to the following information:

- a. location of nearest exits and fire alarms;
- b. procedures to be followed when the fire or smoke detector gives warning; and
- c. procedures to be followed in the event of fire or smoke development.

10. Standards for assistive listening systems for new construction commenced after January first, nineteen hundred ninety-one requiring the installation of assistive listening systems at all places of public assembly so designated by the appropriate building and fire code for use by hearing impaired persons who require use of such a system to improve their reception of sound.

a. For purposes of this subdivision, the term (i) "assistive listening system" shall mean situational-personal acoustic communication equipment designed to improve the transmission and auditory reception of sound; and

(ii) "place of public assembly" shall mean a facility which is open to the public as a theater, meeting hall, hearing room, amphitheater, auditorium, or in any other similar capacity.

b. Standards for such systems shall be developed by the state fire prevention and building code council upon receiving recommendations from the advisory board on assistive listening systems in places of public assembly.

c. The appropriate building code or ordinance shall designate such places of public assembly which shall be required to install such assistive listening systems.

(Added L.1981, c. 707, § 1; amended L.1984, c. 374, § 1; L.1984, c. 864, § 1; L.1984, c. 971, § 1; L.1985, c. 190, § 1; L.1986, c. 435, § 1; L.1987, c. 157, § 1; L.1987, c. 412, § 1; L.1987, c. 763, § 1; L.1988, c. 96, § 1; L.1988, c. 295, § 3; L.1988, c. 506, § 1; L.1989, c. 23, § 2; L.1989, c. 82, § 1; L.1989, c. 270, § 2; L.1991, c. 494, § 1.)

¹ Former §§ 399-a to 399-g.

² So in original.

³ So in original. Probably should read "therefor".

Historical and Statutory Notes

1991 Amendments. Subds. 7 to 10. L.1991, c. 494, § 1, added subd. 7 and redesignated former subds. 7 to 9 as 8 to 10. See Effective Date of Amendment by L.1991, c. 494 note below.

1989 Amendments. Subd. 4, par. e. L.1989, c. 270, § 2, added par. e. See Effective Date of Amendment by L.1989, c. 270 note below.

Subd. 5, set out third, par. b. L.1989, c. 82, § 1, substituted "council" for "division of housing and community renewal". See Effective Date of Amendment by L.1989, c. 82 note below.

Subd. 9, opening par. L.1989, c. 23, § 2, eff. Mar. 31, 1989, substituted Jan. 1, 1991 for Sept. 30, 1989.

1988 Amendments. Subd. 5, set out third, par. a. L.1988, c. 506, § 1, made provisions applicable to cooperative and condominium dwelling units. See Effective Date of Amendment by L.1988, c. 506 note below.

Subd. 5, set out third, par. a. L.1988, c. 96, § 1, deleted "prior to sale or transfer of the property" following "device or devices". See Effective Date of Amendment by L.1988, c. 96 note below.

Subd. 5, set out third, par. b. L.1988, c. 96, § 1, added par. b and redesignated former par. b as c. See Effective Date of Amendment by L.1988, c. 96 note below.

Subd. 5, set out third, par. c. L.1988, c. 506, § 1, made provisions applicable to transferors of condominium units and transferors of cooperative shares. See Effective Date of Amendment by L.1988, c. 506 note below.

Subd. 5, set out third, par. c. L.1988, c. 96, § 1, redesignated former par. b as c; in par. c as so redesignated, deleted "and" following "shall be permitted,"; and redesignated former par. c as d. See Effective Date of Amendment by L.1988, c. 96 note below.

Subd. 5, set out third, par. d. L.1988, c. 96, § 1, redesignated former par. c as d and, in par. d as so redesignated, amended provisions to cover grants rather than transfers of real property, and added provision requiring transferor to bear costs of compliance with subd. See Effective Date of Amendment by L.1988, c. 96 note below.

Subd. 5, set out third, par. e. L.1988, c. 96, § 1, added par. e. See Effective Date of Amendment by L.1988, c. 96.

Subd. 9. L.1988, c. 295, § 3, eff. June 30, 1989, added subd. 9.

1987 Amendments. Subd. 5, par. e. L.1987, c. 763, § 1, eff. Nov. 5, 1987, added par. e and redesignated former par. e as f.

Subd. 5, par. f. L.1987, c. 763, § 1, eff. Nov. 5, 1987, redesignated former pars. e as f and f as g.

Subd. 5, par. g. L.1987, c. 763, § 1, eff. Nov. 5, 1987, redesignated former pars. f as g and g as h.

Subd. 5, par. h. L.1987, c. 763, § 1, eff. Nov. 5, 1987, redesignated former pars. g as h and h as i.

Subd. 6. L.1987, c. 412, § 1, eff. Jan. 19, 1988, decreased the allowable percentage of lead in solder used in piping

to convey drinking water from $\frac{1}{2}$ to $\frac{3}{10}$ of one percent.

Subd. 8. L.1987, c. 157, § 1, added subd. 8. See Effective Date of Amendment by L.1987, c. 157 note below.

1986 Amendments. Subd. 7. L.1986, c. 435, § 1, eff. Jan. 18, 1987, added subd. 7.

1985 Amendments. Subd. 6. L.1985, c. 190, § 1, added subd. 6. See Effective Date of Amendment by L.1985, c. 190 note below.

1984 Amendments. Subd. 5, set out first. L.1984, c. 374, § 1, eff. Nov. 15, 1984, added subd. 5 set out first.

Subd. 5, set out second. L.1984, c. 864, § 1, eff. Jan. 1, 1985, added subd. 5 set out second.

Subd. 5, set out third. L.1984, c. 971, § 1, eff. Jan. 1, 1986, added subd. 5 set out third.

Effective Date of Amendment by L.1991, c. 494; Rules and Regulations. L.1991, c. 494, § 2, provided: "This act [amending this section] shall take effect on the one hundred eightieth day after it shall have become a law [Jan. 15, 1992], provided however, that effective immediately [July 19, 1991], the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the foregoing sections of this act on their effective date are authorized and directed to be made and completed on or before such effective date."

Effective Date of Amendment by L.1989, c. 270; Applicability. L.1989, c. 270, § 3, provided: "This act [amending this section and enacting provision set out as a note under this section] shall take effect on June 1, 1990 and shall only apply to buildings constructed on or after such effective date."

Effective Date of Amendment by L.1989, c. 82; Rules and Regulations. L.1989, c. 82, § 2, provided: "This act [amending this section] shall take effect on the one hundred eightieth day after it shall have become a law [eff. Nov. 7, 1989], provided however, that effective immediately [May 11, 1989], the addition, amendment and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date is authorized and directed to be

made and completed on or before such effective date."

Effective Date of Amendment by L.1988, c. 506; Rules and Regulations. L.1988, c. 506, § 5, provided: "This act [amending Executive Law § 378, Multiple Dwelling Law § 68, and Multiple Residence Law § 15] shall take effect on the one hundred twentieth day after it shall have become a law [eff. Nov. 29, 1988], provided however, that effective immediately [Aug. 1, 1988], the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of the foregoing sections of this act on their effective date are authorized and directed to be made and completed on or before such effective date."

Effective Date of Amendment by L.1988, c. 96; Rules and Regulations. L.1988, c. 96, § 2, provided: "This act [amending this section] shall take effect on the one hundred eightieth day after it shall have become a law [Nov. 23, 1988], provided however, that effective immediately [May 27, 1988], the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the foregoing section of this act on its effective date are authorized and directed to be made and completed on or before such effective date."

Effective Date of Amendment by L.1987, c. 157; Promulgation of Rules and Regulations. L.1987, c. 157, § 2, provided: "This act [amending this section] shall take effect on the one hundred twentieth day after it shall have become a law [became law June 29, 1987; eff. Oct. 27, 1987], except that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date."

Effective Date of Amendment by L.1985, c. 190; Promulgation of Rules and Regulations. L.1985, c. 190, § 2, provided: "This act [amending this section] shall take effect January first, nineteen hundred eighty-six, provided that rules and regulations may be promulgated prior to such date to insure effective implementation of this act."

Effective Date of Amendment by L.1984, c. 374; Promulgation of Rules and Regulations. L.1984, c. 374, § 2, provided: "This act [amending this sec-

tion] shall take effect on the one hundred twentieth day after it shall have become a law [July 18, 1984], except that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date."

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Former § 378. Section 378, L.1951, c. 800, amended L.1961, c. 197, § 9, related to powers of building code council and was repealed by L.1981, c. 707, § 12.

Legislative Findings of L.1989, c. 270. L.1989, c. 270, § 1, eff. June 1, 1990, provided:

"The legislature finds that the current standards regarding the number of sanitary fixtures, including water closets, urinals and lavatories under paragraph (f) of section 900.2 of title nine of the official compilation of codes, rules and regulations of the state of New York, relating to the New York state uniform fire prevention and building code for buildings under group C5, assembly, do not adequately provide for the sanitary needs of women at the places of public assembly named therein.

"The legislature further finds that this inadequacy of sanitary facilities in such places of public assembly causes not only a gender-specific inconvenience, but a threat to public health, safety and comfort.

"The legislature further finds that such inequity of public rest facilities in such C5 buildings is attributable to provisions in the New York state uniform fire prevention and building code which provide equality in the number of water closets and urinals in C5 buildings but which do not include provisions for an equal distribution of such fixtures for use among men and women.

"The legislature therefore finds that legislation must be introduced which will provide for the equal distribution of such fixtures for use among such men and women."

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislature, section is not applicable to buildings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any provision of article 18 which is similar to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and Duties. Rights and remedies unimpaired by L.1981, c. 707, and all functions, powers, duties, rights and obligations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

Cross References

Assistive listening devices in public buildings, see Legislative Law § 7-e; Public Buildings Law § 3, 53.
Violation defined, see Penal Law § 10.00(3).

New York Codes, Rules and Regulations

Plumbing requirements, see 9 NYCRR Part 900 et seq.
Uniform fire prevention and building code, see 9 NYCRR Part 600 et seq.

West's McKinney's Forms

The following forms appear in Selected Consolidated Law Forms under section 378 of Executive Law:

Affidavit of compliance with statutory smoke alarm requirements, see Form 1.

Library References

American Digest System

State government and officers; authority and powers of executive departments, boards, or other bodies, and exercise thereof, see States ¶67.

Encyclopedia

State government and officers; powers, functions, and duties of particular officers, agents, and employees, see C.J.S. States § 130 et seq.

WESTLAW Research

States cases: 360k[add key number].

Notes of Decisions

Public buildings or space 1
Rules and regulations 2
Safety precautions 3

ans Ass'n v. Metropolitan Transp. Authority, 1982, 117 Misc.2d 343, 458 N.Y.S.2d 815.

1. Public buildings or space

1
Genuine issues of material fact, as to whether seller of convent building owned by church constituted "public space" within meaning of State Uniform Fire Prevention and Building Code, whether certain ground level window in subject facility constituted a second exit, and propriety of main exit to cellar, precluded grant of injunctive relief for village against violation of local ordinance through use of that cellar as overnight shelter. Village of Hempstead v. Roman Catholic Church of Our Lady of Loretto at Hempstead, 1991, 151 Misc.2d 750, 573 N.Y.S.2d 599.

Exclusion of elevators to serve handicapped from alteration of public transit stations could not be justified on ground that definition of a public building is one likely to be used and that transit authority statistics revealed that subject stations were not likely to be used by the wheelchair bound. Eastern Paralyzed Veter-

2. Rules and regulations

State Fire Prevention and Building Code Council had authority to promulgate swimming pool enclosure regulation as part of its authority to create general building and structural regulations to prevent injuries from falls and other accidents; Council was not limited to hazards of fire and toxic gases. Tarquini v. Town of Aurora, 1991, 77 N.Y.2d 354, 568 N.Y.S.2d 538, 570 N.E.2d 186, on remand 171 A.D.2d 1001, 569 N.Y.S.2d 222.

3. Safety precautions

Roof that was accessible only through tenants' bedroom window was not "walking surface to which persons have access" within meaning of building code, and, thus, landlord did not violate it by failing to install parapet or railing to prevent tenants' guest from falling from roof. Lesocovich v. 180 Madison Ave. Corp. (3 Dept.1992) — A.D.2d —, 586 N.Y.S.2d 681.

§ 379. Incorporation of higher standards by council upon recommendation of local government; local building regulations

1. Except in the case of factory manufactured homes, intended for use as one or two family dwelling units or multiple dwellings of not more than two stories in height, the legislative body of any local government may duly enact or adopt local laws or ordinances imposing higher or more restrictive standards for construction

within the jurisdiction of such local government than are applicable generally to such local government in the uniform code. Within thirty days of such enactment or adoption, the chief executive officer, or if there be none, the chairman of the legislative body of such local government, shall so notify the council, and shall petition the council for a determination of whether such local laws or ordinances are more stringent than the standards for construction applicable generally to such local government in the uniform code. During the period in which the council is considering such petition, such local laws or ordinances shall remain in full force and effect.

2. If the council finds that such higher or more restrictive standards are reasonably necessary because of special conditions prevailing within the local government and that such standards conform with accepted engineering and fire prevention practices and the purposes of this article, the council shall adopt such standards, in whole or part. The council shall have the power to limit the term or duration of such standards, impose conditions in connection with the adoption thereof, and to terminate such standards at such times, and in such manner as the council may deem necessary, desirable or proper.

3. Nothing in this article shall be construed to prohibit any municipality from adopting or enacting any building regulations relating to any matter as to which the uniform fire prevention and building code does not provide, but no municipality shall have the power to supersede, void, repeal or make more or less restrictive any provisions of this article or of rules or regulations made pursuant hereto.

4. Within one hundred twenty days after the effective date of the uniform code, a local government may by resolution duly enacted petition the council for a determination as to whether an existing building and/or fire code in force in said local government is more stringent than the uniform code. During the period in which the council is considering such petition such local code shall remain in full force and effect. If, after review, the council determines that such local code is less stringent than the uniform code the council shall notify the chief executive officer or, if there be none, the chairman of the legislative body of such local government and the uniform code shall, thirty days after the date of notification, apply in such local government. If the council finds that such local code is not less stringent than the uniform code such local code shall continue in full force and effect until the council, upon its own initiative, reviews such local code and determines that it is no longer more stringent, whereupon the council shall notify the chief

executive officer or chairman of the legislative body of such local government and thirty days after the date of notification the uniform code shall apply in such local government.

5. Notwithstanding the provisions of subdivision one of this section, the legislative body of Nassau county may have duly enacted or adopted or may duly enact or adopt local laws or ordinances imposing higher or more restrictive standards for construction within the jurisdiction of the county than are applicable generally to the county in the uniform code. The chief executive officer, or if there be none, the chairman of the legislative body of the county, shall notify the council, and shall petition the council for a determination of whether such preexisting local laws or ordinances, or within thirty days of such enactment or adoption of such local laws or ordinances, are more stringent than the standards for construction applicable generally to such county in the uniform code. During the period in which the council is considering such petition, such local laws or ordinances shall remain in full force and effect.

(Added L.1981, c. 707, § 1; amended L.1986, c. 622, § 1; L.1986, c. 772, § 3.)

Historical and Statutory Notes

1986 Amendments. Subd. 1. L.1986, c. 772, § 3, eff. Aug. 2, 1986, in sentence beginning "Except in the" inserted exception for factory manufactured homes.

Subd. 5. L.1986, c. 622, § 1, eff. July 26, 1986, added subd. 5.

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Derivation. Former § 379, L.1951, c. 800; amended L.1961, c. 197, § 11; L.1978, c. 311, § 1; repealed L.1981, c. 707, § 12.

Legislative Findings and Purpose of L.1986, c. 772. Amendment by L.1986, c. 772, intended to encourage new and improved technology, techniques, methods and materials to increase the housing supply, reduce construction costs, and make home ownership more accessible, pursuant to L.1986, c. 772, § 1, set out as a note under § 377.

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislature, section is not applicable to buildings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any provision of article 18 which is similar to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and Duties. Rights and remedies unimpaired by L.1981, c. 707, and all functions, powers, duties, rights and obligations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

Cross References

Power of local governments to adopt and amend local laws, see Municipal Home Rule Law § 10.

Library References

American Digest System

Health regulations and offenses, see Health and Environment § 32.
Municipal corporations; building regulations, see Municipal Corporations § 601.

Encyclopedia

Health regulations in general; buildings, slum clearance, and public housing, see C.J.S. Health and Environment § 28 et seq.
Municipal corporations; building and zoning regulations in general, see C.J.S. Municipal Corporations § 224.
Municipal corporations; building regulations, see C.J.S. Municipal Corporations § 225.

WESTLAW Research

Health and environment cases: 199k[add key number].
Municipal corporations cases: 268k[add key number].

Notes of Decisions

Inconsistent regulations 2
Restrictiveness of local regulations 1

1. Restrictiveness of local regulations

Once municipality adopts state building code it may not unilaterally impose more restrictive conditions than set forth in code or withdraw from it piecemeal. Association of Employing Plumbing Contractors of Nassau County, Inc. v. Hanold, 1975, 84 Misc.2d 990, 378 N.Y.S.2d 241.

Municipality which affirmatively adopts this article is prohibited from superseding its provisions or enacting more restrictive requirements unless consent of State Building Code Council is obtained. Idelevitz v. City of Glen Cove, 1962, 230 N.Y.S.2d 591.

A municipality which has adopted the State Building Construction Code may also have a local code with provisions more restrictive than the State Code provided that builders are given the option of complying with the State Code or the local code. 1978, Op.Atty.Gen. (Inf.) 168.

More restrictive provisions of a town's fire prevention code, enacted subsequent to said town's adoption of the State Building Construction Code, are invalid unless consent thereto is obtained from

the State Building Code Council. 1968, Op.Atty.Gen. (Inf.) 82.

A municipality may not enact a local law requiring the installation of smoke and fire detectors in buildings in accordance with specifications which are more restrictive than those prescribed by the State Building Construction Code. Op.St.Compt. 81-326.

More restrictive standards of building construction may be adopted by the State Building Code Council and made applicable to such town on recommendation of the town board. Op.State Compt. 74-1021.

2. Inconsistent regulations

Where town had accepted State Building Code, and rules adopted by State Building Council specifically permitted use of plastic pipe in one and two-family dwellings and multiple dwellings not exceeding six stories in height, neither the town superintendent of buildings nor any town official, nor the town board itself had authority to promulgate order banning plastic piping in the town, and such order was illegal, arbitrary and capricious. Association of Employing Plumbing Contractors of Nassau County, Inc. v. Hanold, 1975, 84 Misc.2d 990, 378 N.Y.S.2d 241.

Where a town has adopted the State Building Construction Code, it may not enact building regulations which are in-

consistent with, or supersede, any provisions thereof. Op.State Compt. 74-1021.

§ 380. Granting authority

The secretary, by and through the office of fire prevention and control, shall administer a program of local assistance to aid local governments in the administration and enforcement of locally adopted or state promulgated building and fire codes. Said program of local assistance shall conform to the requirements of section fifty-four-g of the state finance law. The secretary shall adopt, amend and rescind such rules, regulations and guidelines as may be necessary for the performance of his functions, powers and duties under this section.

(Added L.1981, c. 707, § 1.)

Historical and Statutory Notes

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Former § 380. Section, L.1951, c. 800; amended L.1953, c. 472; L.1955, c. 512, related to licenses, permits and certificates and was repealed by L.1981, c. 707, § 12.

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislature, section is not applicable to buildings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any provision of article 18 which is similar

to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and Duties. Rights and remedies unimpaired by L.1981, c. 707, and all functions, powers, duties, rights and obligations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

Cross References

Office of fire prevention and control, see § 155 et seq.
Secretary of state, see § 90.
State assistance to local governments for supporting activities related to fire prevention and building codes, see State Finance Law § 54-g.

New York Codes, Rules and Regulations

Financial assistance to local governments for building and fire code administration and enforcement, see 19 NYCRR Part 433.

Library References

American Digest System

State government and officers; authority and powers of executive departments, boards, or other bodies, and exercise thereof, see States § 67.

Encyclopedia

State government and officers; powers, functions, and duties of particular officers, agents, and employees, see C.J.S. States § 130 et seq.

WESTLAW Research

States cases: 360k[add key number].

§ 381. Administration and enforcement of the New York state uniform fire prevention and building code

1. The secretary shall promulgate rules and regulations prescribing minimum standards for administration and enforcement of the uniform fire prevention and building code promulgated in accordance with sections three hundred seventy-seven and three hundred seventy-eight of this article. Such rules and regulations shall become effective not later than the first day of January, nineteen hundred eighty-five. The secretary shall promulgate such regulations after public hearing and after considering reaction to initial administration and enforcement of the uniform building and fire prevention code, including how local governments have organized to provide for such initial administration and enforcement. Such rules and regulations shall address the nature and quality of enforcement and shall include, but not be limited to the following:

- a. frequency of inspections,
- b. number and qualifications of staff, including requirements that inspectors be certified pursuant to this chapter,
- c. required minimum fees for administration and enforcement,
- d. adequacy of inspections,
- e. adequacy of means for insuring compliance with the uniform code,
- f. establishment of a procedure whereby any provision or requirement of the uniform code may be varied or modified in cases where strict compliance with such provision or requirement would entail practical difficulties or unnecessary hardship or would otherwise be unwarranted. Such procedure shall be designed to insure that any such variance or modification shall not substantially affect adversely provisions for health, safety and security, and that equally safe and proper alternatives may be prescribed. Requests for a variance shall be resolved within sixty days of the date of application unless a longer period is required for good cause shown, and
- g. procedures for inspection of certain classes of buildings based upon design, construction, ownership, occupancy or use, including,

but not limited to, mobile homes, factory manufactured homes and state-owned buildings.

Nothing in the rules shall require or be construed to require regular, periodic inspections of owner-occupied one and two-family dwellings 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.

2. Except as may be provided in regulations of the secretary pursuant to subdivision one of this section, every local government shall administer and enforce the uniform fire prevention and building code on and after the first day of January, nineteen hundred eighty-four, provided, however, that a local government may enact a local law prior to the first day of July in any year providing that it will not enforce the uniform code on and after the first day of January next succeeding. In such event the county in which said local government is situated shall administer and enforce the uniform code within such local government from and after the first day of January next succeeding the effective date of such local law, in accordance with the provisions of paragraph b of subdivision five of this section unless the county shall have enacted a local law providing that it will not enforce the uniform code within that county. In such event the secretary in the place and stead of the local government shall, directly or by contract, administer and enforce the uniform code. A local government or a county may repeal a local law which provides that it will not enforce the uniform code and shall thereafter administer and enforce the uniform code as provided above. Local governments may provide for joint administration and enforcement by agreement pursuant to article five-G of the general municipal law. Any local government may enter into agreement with the county in which such local government is situated to administer and enforce the uniform code within such local government. Local governments or counties may charge fees to defray the costs of administration and enforcement.

3. On and after the first day of July, nineteen hundred eighty-five, the secretary shall have power to investigate and conduct hearings relative to whether administration and enforcement of the uniform fire prevention and building code complies with the minimum standards promulgated pursuant to subdivision one of this section. At least ten days written notice of any such hearing shall be provided to the elective or appointive chief executive officer or, if there be none, the chairman of the legislative body of the local

government or county whose administration and enforcement of the uniform code is at issue.

4. If the secretary determines that a local government has failed to administer and enforce the uniform fire prevention and building code in accordance with the minimum standards promulgated pursuant to subdivision one of this section, the secretary shall take any of the following actions, either individually or in combination in any sequence:

a. The secretary may issue an order compelling compliance by such local government with the standards for administration and enforcement of the uniform code.

b. The secretary may ask the attorney general to institute in the name of the secretary an action or proceeding seeking appropriate legal or equitable relief to require such government to administer and enforce the uniform code.

c. the secretary may designate the county in which such local government is located to administer and enforce the uniform code in such local government. In the case of such designation, the provisions of subdivision five of this section shall apply.

d. The secretary may, in the place and stead of the local government, administer and enforce the uniform code in accordance with the minimum standards promulgated pursuant to subdivision one of this section. In such event, the provisions of subdivision five of this section shall apply.

5. Where the secretary has designated a county to administer and enforce the uniform fire prevention and building code within a local government or has assumed authority for administration and enforcement pursuant to subdivision two or paragraph d of subdivision four of this section:

a. Such local government or county government shall not administer and enforce the uniform code, and shall not charge or collect fees for such administration and enforcement.

b. Such county shall administer and enforce the uniform code within such local government from and after the date of such designation. Such administration and enforcement shall apply the minimum standards promulgated by the secretary pursuant to subdivision one of this section. Notwithstanding any other provisions of law, such county shall have full power to administer and enforce the uniform code in accordance with such minimum standards, including the power to charge and collect fees for such administration and enforcement.

c. The secretary shall designate the local government or county government to resume administration and enforcement of the uniform code when the secretary is satisfied that such local government or county will provide such administration and enforcement in compliance with the minimum standards promulgated pursuant to subdivision one of this section.

d. The provisions of subdivisions three and four of this section shall apply to counties which have been designated to administer and enforce the uniform code in such local government.

6. The secretary shall study and from time to time make recommendations to the governor and legislature concerning:

a. Appropriate means to provide encouragement, support and inducements for local governments and counties to exercise their responsibilities pursuant to this section; and

b. Appropriate means to provide encouragement, support and inducements to facilitate compliance with the provisions of the uniform code.

(Added L.1981, c. 707, § 1.)

Historical and Statutory Notes

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Former § 381. Section, L.1951, c. 800; amended L.1961, c. 197, § 12; L.1964, c. 66, related to the state building construction board of review and was repealed by L.1981, c. 707, § 12.

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. L.1981, c. 707, § 19, eff. July 21, 1981, provided: "Notwithstanding any other provisions of this act [L.1981, c. 707], the provisions of article eighteen of the executive law provided for in section one of this act shall not be applicable to any building constructed or under construction prior to the first day of January, nineteen hundred eighty-four, until the legislature by law expressly provides for financial incentives and assistance for the implementation of such provisions and their applicability to such buildings provided, however, that this section shall not apply to any provision of such article eighteen which is substantially similar to any provision of a code, general, special or local law, or ordinance to which an existing

building was subject immediately prior to the effective date of such article."

Impairment of Rights or Remedies; Transfer of Functions, Powers, and Duties. L.1981, c. 707, §§ 5 to 11, eff. Jan. 1, 1984, provided:

"§ 5. No existing right or remedy of any character shall be lost, impaired or affected by reason of this act [L.1981, c. 707].

"§ 6. For the purpose of succession to all functions, powers, duties, rights and obligations transferred and assigned to, devolved upon and assumed by the department of state and the secretary of state pursuant to this act, the department of state shall be deemed and held to constitute the continuation of the division of housing and community renewal or the commissioner thereof, and not a different agency or authority.

"§ 7. The division of housing and community renewal and the commissioner thereof shall with respect to the functions, powers, duties, rights and obligations which are transferred to the department of state by this act, deliver to the secretary of state all books, papers,

records and property of their respective offices pertaining to such transferred functions, powers, duties, rights and obligations.

"§ 8. Any business or other matter undertaken or commenced by the division of housing and community renewal pertaining to or connected with the functions, powers, duties, rights and obligations hereby transferred and assigned to the department of state and pending on the effective date of this act, may be conducted and completed by the department of state in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the division of housing and community renewal.

"§ 9. All rules, regulations, acts, determinations and decisions of the division of housing and community renewal and the commissioner thereof, pertaining to the functions herein transferred and assigned, and in force at the time of such transfer, assignment, assumption or devolution, shall continue in force and effect as rules, regulations, acts, determinations and decisions of the department of state until duly modified or abrogated by the secretary of state.

"§ 10. Upon transfer of functions, powers and duties to the department of state and the division of the budget, pursuant to this act, provision may be made for the transfer to the department of state and the division of the budget of such officers and employees of the division of housing and community renewal as the secretary of state and the director of the budget may deem necessary for the exercise of those functions, powers and duties. Officers and employees so transferred shall be transferred without further examination or qualification and shall retain their respective civil service classification and status. For the purpose of determining the employees holding permanent appointment in competi-

tive class positions to be transferred, such employees shall be selected within each class of positions in the order of their original appointment, with due regard to the right of preference in retention of disabled and nondisabled veterans. Any such employee who, at the time of such transfer, has a temporary or provisional appointment shall be transferred subject to the same right of removal, examination or termination as though such transfer had not been made. Employees holding permanent appointments in competitive class positions who are not transferred pursuant to this section shall have their names entered upon an appropriate preferred list for reinstatement pursuant to the civil service law.

"§ 11. The director of the budget is hereby authorized to transfer so much as he deems necessary from the amount appropriated to the division of housing and community renewal to the department of state for carrying out the functions, powers and duties transferred to the department of state by this act."

Compliance With Retroactive Provisions; Financial Incentives and Assistance. L.1981, c. 634, § 1, eff. July 21, 1981, provided: "The secretary of state is hereby directed to conduct or to have conducted a study into financial incentives and assistance which may be appropriate to facilitate compliance with retroactive provisions of the New York state uniform fire prevention and building code. The study shall include the feasibility of such alternatives as tax incentives; revolving loan funds; and state guaranteed loans and direct grants, among others.

"The secretary of state shall report the results of the study, together with his recommendations, to the governor and the legislature on or before January thirty-first, nineteen hundred eighty-three."

Cross References

- Attorney general, see § 60 et seq.
- Counties described, see Consolidators' Notes on State Law.
- Municipal co-operation, see General Municipal Law § 119-m et seq.
- Power of local governments to adopt and amend local laws, see Municipal Home Rule Law § 10.
- Secretary of state, see § 90.

New York Codes, Rules and Regulations

Uniform fire prevention and building code, see 9 NYCRR Part 600 et seq.

Library References

American Digest System

Health regulations and offenses, see Health and Environment ¶32.
Municipal corporations; building regulations, see Municipal Corporations ¶601.

Encyclopedia

Health regulations in general; buildings, slum clearance, and public housing, see C.J.S. Health and Environment § 28 et seq.
Municipal corporations; building and zoning regulations in general, see C.J.S. Municipal Corporations § 224.
Municipal corporations; building regulations, see C.J.S. Municipal Corporations § 225.

WESTLAW Research

Health and environment cases: 199k[add key number].
Municipal corporations cases: 268k[add key number].

Notes of Decisions

- Building Inspections 3**
- Cancellation or vacation of certificates or permits 4**
- Compliance with code**
 - Generally 1**
 - Variances or exclusions 2**
- Enforcement**
 - Generally 5**
 - Costs or expenditures 6**
 - Sharing of aid 7**
- Permit fees 8**
- Variances or exclusions, compliance with code 2**

1. Compliance with code—Generally

City clerk was mandated to deny application to amend mercantile license from restaurant to supper club, upon learning that premises, if licensed as supper club, would not be, as then constituted, in compliance with various requirements of state uniform fire prevention and building code, including requirement of automatic sprinkler system, and city's fire prevention code. Wallfor, Inc. v. Eaton, 1987, 127 A.D.2d 838, 512 N.Y.S.2d 228.

Although written agreement relating to construction of extension and other

home improvements did not expressly provide that contract was to be performed in accordance with state and local fire prevention and building code regulations, contractor was nonetheless obligated to perform contract as though such conformance was express term of contract; it had to be presumed parties intended contract to be performed in accordance with state and local laws, and county's consumer affairs law expressly prohibited home improvement contractors from willful or deliberate disregard of building code of state or any municipality. Reale v. Linder, 1987, 135 Misc.2d 317, 514 N.Y.S.2d 1004, affirmed as modified on other grounds 143 Misc.2d 496, 544 N.Y.S.2d 702.

Erection of air-supported plastic dome over swimming pool to enable year-round use of pool was not violative of this article whose only requirement for acceptability of new methods of construction was adequate performance where evidence clearly showed that dome complied in all respects with performance standards of said article. Suburban Club of Larkfield, Inc. v. Town of Huntington, 1968, 57 Misc.2d 1051, 294 N.Y.S.2d 4, affirmed 31 A.D.2d 718, 297 N.Y.S.2d 893.

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2. — Variances or exclusions

A local board of review may not approve variances and modifications of the code applicable throughout the municipality but may approve them on a case-by-case basis upon a finding of practical difficulty or unnecessary hardship. 1981, Op.Atty.Gen. (Inf.) Feb. 5.

The Auburn Industrial Development Authority does not require a certificate of occupancy for its construction projects and the city of Auburn, which has adopted the State Building Code, is not obligated to issue a certificate of occupancy. 1980, Op.Atty.Gen. (Inf.) Mar. 24.

3. Building inspections

When a town has adopted the State Building Code, the building inspector who is also a resident general building contractor should not continue in the latter activities if, as inspector, he is obligated to pass upon his own work or issue permits therefor. 1968, Op.Atty.Gen. (Inf.) 45.

4. Cancellation or vacation of certificates or permits

Even though structure was to have only one main entrance, an interior, open staircase for access to each floor, one heating system, and common utility lines, plans indicating first and second floor would each contain kitchen, master bedroom, at least one additional bedroom, bathrooms, living room, and dining room supported revocation of building permit on ground that structure was not intended for use as one-family residence. *Mucci v. Town of Eastchester*, 1985, 109 A.D.2d 884, 486 N.Y.S.2d 787.

When certificate of occupancy is issued in connection with new building for which building permit has been obtained, it is subject to infirmities of building permit; thus, if building permit is void, then subsequent certificate of occupancy pursuant to permit is similarly void and revocable. *Bekermus v. Nardy*, 1984, 123 Misc.2d 378, 472 N.Y.S.2d 570.

A certificate of building occupancy, once issued and delivered, cannot be recalled, cancelled or vacated at whim of the homeowner or a building department; in order to cancel or vacate certifi-

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icate, a mistake or fraud must be shown in issuance of certificate. *People v. Yarrington*, 1970, 62 Misc.2d 1030, 310 N.Y.S.2d 976.

5. Enforcement—Generally

Where a building is constructed and is in violation of the State Building Construction Code, the town may: (1) utilize any enforcement method adopted by local law or ordinance; (2) order necessary corrections; (3) obtain an injunction against further construction or ordering an abatement; or (4) refuse to issue a certificate of occupancy. 23 Op. State Compt. 468, 1967.

Town may adopt the State Building Construction Code by adoption of a resolution but enforcement must be pursuant to an ordinance or local law. 23 Op. State Compt. 430, 1967.

There is no authority for contract between town and village or villages therein whereby town would administer and enforce State Building Code in entire town. 10 Op. State Compt. 103, 1954.

A town resolution to adopt and effectuate a state building code must be furnished the necessary enforcement legislation. 9 Op. State Compt. 396, 1953.

6. — Costs or expenditures

In the absence of any provision in the State Fire Prevention and Building Code requiring that a county pay its own code enforcement officer a fee for inspecting county buildings, the county may address the issue of paying the enforcement officer's fee in any reasonable way. Op. Atty. Gen. (Inf.) 91-13.

By local law, a village may provide for a fire code enforcement officer to serve a three-year term enforcing the Uniform Fire Prevention and Building Code, and may share the cost with the town in employing a single code enforcement officer. Op. State Compt. 85-19.

County-wide taxes, fees and State aid may be used to pay a county's costs in administering and enforcing the New York State Fire Prevention and Building Code on behalf of local governments which have elected to have the county perform such activities. Op. State Compt. 84-56.

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7. — Sharing of aid

The Village of Bronxville, which is a part of the Eastchester Fire District, may adopt a local law authorizing the sharing of state aid monies which it receives for administration and enforcement of the State Fire Prevention and Building Code with Eastchester. Op. State Compt. 84-33.

8. Permit fees

Since regulation and imposition of building permit fees is reserved under this section to local jurisdictions, there is strong presumption that city did not intend that state code provisions should infringe upon this local authority. *City of Syracuse v. Hueber*, 1976, 52 A.D.2d 341, 383 N.Y.S.2d 774.

§ 382. Remedies

1. In addition to and not in limitation of any power otherwise granted by law, every local government and its authorized agents shall have the power to order in writing the remedying of any condition found to exist in, on or about any building in violation of the uniform fire prevention and building code and to issue appearance tickets for violations of the uniform code.

2. Any person, having been served, either personally or by registered mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the uniform fire prevention and building code, who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to subdivision one of section three hundred eighty-one of this article, such time period to be stated in the order, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in the construction of any building who shall knowingly violate any of the applicable provisions of the uniform code or any lawful order of a local government, a county or the secretary made thereunder regarding standards for construction, maintenance, or fire protection equipment and systems, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both.

3. Where the construction or use of a building is in violation of any provision of the uniform code or any lawful order obtained thereunder, a justice of the supreme court at a special term in the judicial district in which the building is located, may order the removal of the building or an abatement of the condition in violation of such provisions. An application for such relief may be made by the secretary, an appropriate municipal officer, or any other person aggrieved by the violation.

(Added L.1981, c. 707, § 1.)

§ 382

Historical and Statutory Notes

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Former § 382. Section, L.1951, c. 800; amended L.1954, c. 377; L.1961, c. 197, § 13; L.1962, c. 310, § 136; L.1974, c. 266, § 1; L.1978, c. 397, § 5, related to powers and duties of the board of review and was repealed by L.1981, c. 707, § 12.

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislature, section is not applicable to buildings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any

provision of article 18 which is similar to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and Duties. Rights and remedies unimpaired by L.1981, c. 707, and all functions, powers, duties, rights and obligations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

Cross References

Appearance tickets, see CPL 150.10 et seq.
Personal service, see CPLR 307 et seq.

New York Codes, Rules and Regulations

Uniform fire prevention and building code, see 9 NYCRR Part 600 et seq.

Library References

American Digest System

Health regulations and offenses, see Health and Environment ⇨32.
Municipal corporations; building regulations, see Municipal Corporations ⇨601.

Encyclopedia

Health regulations in general; buildings, slum clearance, and public housing, see C.J.S. Health and Environment § 28 et seq.
Municipal corporations; building and zoning regulations in general, see C.J.S. Municipal Corporations § 224.
Municipal corporations; building regulations, see C.J.S. Municipal Corporations § 225.

WESTLAW Research

Health and environment cases: 199k[add key number].
Municipal corporations cases: 268k[add key number].

Notes of Decisions

Civil liability or penalty for violations

1
Violations by government agencies 2

1. Civil liability or penalty for violations

A landlord's violation of provisions of this article as adopted by village in which landlord's building was located, in regard to provisions for a light and handrail on a staircase, did not subject landlord to absolute statutory liability to a tenant's guest who fell on the stairway but such failure was simply some evidence of negligence which the jury, in action by guest against landlord, could take into consideration with all other evidence on the subject. *Major v. Waverly & Ogden, Inc.*, 1960, 7 N.Y.2d 332, 197 N.Y.S.2d 165, 165 N.E.2d 181.

Building Construction Code was not formulated for special benefit of a particular class, but rather was designed to provide reasonably uniform standards for construction and construction materials and reasonable safeguards generally for the safety, health and welfare of occupants of buildings, and no legislative intent is apparent in such Code to create a statutory cause of action in fa-

vor of any member of public who may be injured by violation of the Construction Code, and the Code imposes no duty of compliance expressly on anyone. *Major v. Waverly & Ogden, Inc.*, 1959, 8 A.D.2d 380, 190 N.Y.S.2d 526, motion granted 7 N.Y.2d 745, 193 N.Y.S.2d 652, 162 N.E.2d 737, affirmed 7 N.Y.2d 332, 197 N.Y.S.2d 165, 165 N.E.2d 181.

A city may adopt an ordinance to provide civil penalties for violations of the State Building Construction Code, except as otherwise expressly provided in this article. 1974, Op.Atty.Gen. (Inf.) 264.

2. Violations by government agencies

Town's remedy with respect to alleged violations of State Building Construction Code by Urban Development Corporation was to appeal to State Board of Review. *Town of Greece v. Urban Development Corp.—Greater Rochester, Inc.*, 1974, 79 Misc.2d 375, 360 N.Y.S.2d 171.

The city of Auburn is not liable for failure to enforce applicable local fire code violations on property owned by the Auburn Industrial Development Authority. 1980, Op.Atty.Gen. (Inf.) Mar. 24.

§ 383. Construction with other laws; severability

1. The provisions of this article and of the uniform fire prevention and building code shall supersede any other provision of a general, special or local law, ordinance, administrative code, rule or regulation inconsistent or in conflict therewith provided however:

a. Nothing herein shall impair the validity of any action taken pursuant to or in compliance with such law or regulation before the effective date of the uniform code; and

b. Any improvement, modification, alteration, adaptation, redesign or repair required by or pursuant to any general, special or local law, administrative code, rule or regulation enacted and effective before the effective date of the uniform code shall be made in the manner and within the time so required.

c. That, in cities with a population of over one million, the existing building and fire prevention codes shall continue in full force and effect beyond January one, nineteen hundred eighty-four unless the council, after analysis and consultation with the building

and fire officials of such cities, shall determine that said local code provisions are less stringent than the uniform code. Existing local statutory, regulatory and administrative laws and provisions of such cities shall continue in full force and effect unless the foregoing is determined by the council. Notwithstanding this paragraph, when such factory manufactured homes are intended for use as one or two family dwelling units or multiple dwellings of not more than two stories in height, provided such multiple dwellings are not intended for use as hotels or motels, the provisions of this article and of the uniform fire prevention and building code pertaining to factory manufactured homes shall supersede any other provision of general, special or local law, ordinance, administrative code, rule or regulation inconsistent or in conflict therewith.

2. Nothing herein shall be construed as affecting the authority of the state labor department to enforce a safety or health standard issued under provisions of sections twenty-seven and twenty-seven-a of the labor law.

3. Nothing herein shall be construed to relieve a person from complying with a stricter standard issued pursuant to the Occupational Safety and Health Act of 1970, as amended.¹

4. If any section of this article or the application thereof to any person or circumstances shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section or the application of any part thereof to any other person or circumstances and to this end the provisions of each section of the article are hereby declared to be separable.

(Added L.1981, c. 707, § 1; amended L.1986, c. 772, § 4.)

¹ 29 U.S.C.A. § 651 et seq.

Historical and Statutory Notes

1986 Amendments. Subd. 1, par. c. L.1986, c. 772, § 4, eff. Aug. 2, 1986, added sentence beginning "Notwithstanding this paragraph".

Effective Date. Section effective July 21, 1981, pursuant to L.1981, c. 707, § 20.

Former § 383. Section 383, L.1951, c. 800; amended L.1951, c. 580, § 8; L.1954, c. 166, § 2; L.1961, c. 197, § 14, related to administration and was repealed by L.1981, c. 707, § 12.

Legislative Findings and Purpose of L.1986, c. 772. Amendment by L.1986, c. 772, intended to encourage new and improved technology, techniques, methods and materials to increase the housing supply, reduce construction costs, and make home ownership more accessible, pursuant to L.1986, c. 772, § 1, set out as a note under § 377.

Buildings Constructed or Under Construction Prior to Jan. 1, 1984. Unless and until otherwise provided by legislature, section is not applicable to build-

ings constructed or under construction before Jan. 1, 1984, and provided further that this section shall not apply to any provision of article 18 which is similar to a provision of a code, local law or ordinance to which an existing building was subject prior to Jan. 1, 1984, pursuant to L.1981, c. 707, § 19, set out as a note under § 381.

Impairment of Rights or Remedies; Transfer of Functions, Powers and

Duties. Rights and remedies unimpaired by L.1981, c. 707, and all functions, powers, duties, rights and obligations under act transferred to secretary and department of state and division of the budget, pursuant to L.1981, c. 707, §§ 5 to 11, set out as a note under § 381.

Cross References

- Compliance by state sports authority, see Public Authorities Law § 2466.
- Compliance by state urban development, limited-profit, and limited dividend projects, see Private Housing Finance Law §§ 26-b, 83, 576-b.
- Condominium act; effect of other laws, see Real Property Law § 339-ee.
- Construction, equipment and maintenance of places of public assembly, see Labor Law § 470 et seq.
- Co-operation with municipalities under state urban development corp. and state urban development and research corp. acts, see McK Unconsol.Laws §§ 6266, 6308.
- General duty to protect employees' health and safety; enforcement, see Labor Law § 200.
- Roosevelt Island operating corp.; applicability of local laws, see McK.Unconsol.Laws § 6389.
- Safety and health standards, see Labor Law § 27 et seq.
- Variations from standards, see Labor Law § 30.

New York Codes, Rules and Regulations

- Uniform fire prevention and building code, see 9 NYCRR Part 600.

Library References

American Digest System

- Effect of partial invalidity of statutes in general, see Statutes ¶64(1).

Encyclopedia

- Effect of partial invalidity of statutes in general, see C.J.S. Statutes § 92.

WESTLAW Research

- Statutes cases: 361k[add key number].

Notes of Decisions

Adoption of uniform code

- Generally 2
- Local codes or ordinances 3
- Partial adoption 4

Law governing 1

- Local codes or ordinances, adoption of uniform code 3

Partial adoption of uniform code 4

1. Law governing

- A state building conservation and fire prevention code, when enacted, would have no applicability to premises and

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Note 1

conditions subject to regulation by the terms of the labor law and the industrial code, and any standards promulgated by such code which are higher and therefore inconsistent with the state building construction code and other legislative acts would be unenforceable. 1975, Op. Atty.Gen. 17.

Where local building construction is begun under the State Building Construction Code with regard to structures subject to the provisions of Multiple Residence law, Articles 4-7, inclusive, these provisions of the Multiple Residence Law become inoperative because the State Building Construction Code is "applicable" and "operative." 1964, Op. Atty. Gen. 130.

2. Adoption of uniform code—Generally

In a municipality that has adopted the state building code, the state building conservation and fire prevention code and a model code, the state codes prevail in event of a conflict between them and the model code. Op. Atty. Gen. (Inf.) 82-60.

Where a town has its own building code and has adopted the State Building Construction Code, a builder is given the option of choosing the code under which he wishes to build provided the town code does not allow its code to supersede, void, repeal or contain a more restrictive provision than the state code. Op. State. Compt. 69-129.

It is not necessary that the municipality pass a resolution abandoning its local building code after the adoption of the State Building Construction Code. 23 Op. State Compt. 430, 1967.

A school district is not required to obtain a building permit for construction of school buildings in a town which has adopted the state building code and need only comply with requirements of § 408 of the Education Law. 16 Op. State Compt. 384, 1960.

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3. — Local codes or ordinances

This article is applicable only in municipalities where local legislative body affirmatively adopts its provisions, and under this article and §§ 3, 326 and 329 of the Multiple Residence Law municipality has option to continue in force its own local laws or to enact such laws with only restriction being that they meet minimum standards prescribed by State. *Idelevitz v. City of Glen Cove*, 1962, 230 N.Y.S.2d 591.

Many provisions of the State Fire Protection Code, this article, regulate fire safety practices in existing buildings, and a municipality that does not accept the application of the State Code may adopt its own building conservation and fire protection code. Op. Atty. Gen. (Inf.) 82-7.

A municipality's construction code prevails over the conflicting State Building Construction Code, where the municipality has not adopted the State Building Construction Code. 1978, Op. Atty. Gen. (Inf.) Jan. 4.

In the city of Batavia, the Industrial Code applies to all municipal buildings and the State Building Code applies only to municipal property not used in connection with the performance of governmental functions. 1974, Op. Atty. Gen. (Inf.) 267.

A town which has adopted a fire prevention code may also adopt the State Building Conservation and Fire Prevention Code, but provisions of the former code which are inconsistent with the State code may not be enforced by the town. 32 Op. State Compt. 158, 1976.

4. — Partial adoption

A municipality may not adopt a part of the State Building Conservation and Fire Prevention Code. 1981, Op. Atty. Gen. (Inf.) Feb. 5.

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