

NEW YORK CITY CONSTRUCTION CODES

PREFACE

Background

The *New York City Construction Codes*, effective July 1, 2008, are patterned after the family of model construction codes published by the International Code Council (ICC). While the ICC Codes, with their interpretive commentary and history of amendments, will in the future be a rich new source for interpreting the City's building laws, New York City has extensively modified the ICC text. As modified, the provisions incorporate the collective wisdom of more than 350 years of building regulation in the City.

New York City was the first jurisdiction in the country to experience the problems associated with building construction in a high-density urban environment and the first to attempt to solve them through regulatory measures. In 1625, the Dutch West India Company established rules for the types and locations of houses that could be built in the colony of New Amsterdam. This early attempt at meeting public safety and sanitation needs would evolve into one of the most comprehensive building codes in the United States.

Based initially on fire prevention principles, the City's regulations evolved into provisions governing sanitation and building construction and materials. From their start in the late 17th century, to creation of the position of "Superintendent of Buildings" within the Fire Department in 1860, to creation of a citywide Department of Buildings in 1936, through comprehensive revisions in both 1938 and 1968, the City's building code grew to become one of the most stringent in the nation. The 1938 revisions were geared toward capturing provisions to meet the needs of new skyscrapers and multiple dwellings. The 1968 revisions were designed to incorporate new technologies and building practices, including performance criteria for building construction.

The 1968 revisions reflect the last comprehensive update of New York City's building construction laws. Predictably, they had begun to show their limitations. Obsolete provisions remained on the books, conflicting amendments became loopholes for industry to navigate, and new technologies and construction practices that had become industry standards were noticeably absent. Significant amendments over the years tended to be reactions to unfortunate events rather than comprehensive revisions.

Recognizing these problems, in November 2002, Mayor Michael R. Bloomberg signed Executive Order No. 30, creating an advisory commission to study the feasibility of adopting a model code for the City. The Mayor's Advisory Commission issued its report in May 2003, recommending that the City adopt, in modified form, the ICC's family of codes. The NYC Construction Codes Program* was born, housed in and supported by the City's Department of Buildings ("Department").

Construction Codes Program

Although many jurisdictions have adopted the I-Codes, New York City is recognized as a unique and premiere urban environment. No other American city can match the diversity of New York's built environment. From the canyons of Manhattan to the brownstones and houses of Brooklyn, Queens, the Bronx, and Staten Island, New York City poses a unique challenge for any building code. As a result, the City extensively rewrote the I-Codes in many technical areas. Some chapters were deleted entirely and replaced with requirements that better reflect the City's singular needs.

Moreover, given the complex nature of New York City's built environment, the Department of Buildings performed exhaustive reviews of the proposed code to determine the impacts it might have on the City and the construction industry, including a cost impact study and an environmental assessment. In terms of scope and level of review, New York City's construction code effort was more akin to a state-level effort.

The Code Development Process

Although administered by the Department, the Construction Codes Program reached well beyond the agency's corridors. In an unprecedented public/private partnership, over 400 participants from the architectural and engineering community, industry, labor, and government contributed more than 300,000 hours attending more than 500 technical, advisory, and managing committee meetings, as they pored over and developed new text and debated policy.

Recognizing that any significant stakeholder opposition at the City Council could frustrate the effort, the Department used a consensus-based model. Technical committees were asked to reach agreement on as many proposed changes as possible, a process that yielded a result on all but about two dozen issues. The Department mediated a resolution on seven of those issues, and the Commissioner made the final determination on the remaining ones. The result was that virtually all stakeholders walked away with something and had an interest in seeing the product enacted as law. Issues that proved too difficult to resolve for this revision were committed to the 3-year revision cycle contemplated by the ICC model.

The first phase of the Construction Codes Program was completed in December 2005, when the Council enacted and the Mayor signed Local Law 99 of 2005. That legislation established the blueprint for the City's adoption effort: it enacted a new Title 28 of the *New York City Administrative Code* reflecting new administrative and enforcement provisions as well as a new plumbing code; it contemplated the subsequent passage of a completion bill, consisting of a new building code, mechanical code, fuel gas code and

*Formerly Model Code Program

residential code; and it provided an effective date of July 1, 2007 for all provisions, provided that the completion bill was passed by that date.

Local Law 33 of 2007 was that completion bill. It revised the administrative and enforcement provisions of Local Law 99. Many of those provisions were edited and placed in more appropriate locations in the first chapter (Chapter 1) of the individual codes. Moreover, Local Law 99 did not contain a complete and uniform schedule of penalties, requiring the development of an integrated enforcement text. And of course, it filled out the technical provisions of the new construction codes by adding a new building code, fuel gas code, and mechanical code. Local Law 33 repealed those portions of Titles 26, 27, and 28 of the *Administrative Code* superseded by the new provisions. All portions of the new construction codes are effective July 1, 2008, although they will not be mandatory until July 1, 2009.

Three other local laws complete the package of legislation reflected in this publication: Local Laws 37 and 38 of 2007 and Local Law 8 of 2008. Each of those enactments contained provisions either making nonsubstantive corrections and clarifications or incorporating stand-alone legislation that was not reflected in Local Law 33.

Structure and Applicability of the New Codes

The new Title 28 contains five chapters that will govern all of the new construction codes, covering administration, enforcement, maintenance obligations, licensing, and miscellaneous provisions, including outdoor signs. These provisions were written by and for New York City and thus do not appear in the I-Codes. They are followed by four additional chapters containing the plumbing, building, mechanical, and fuel gas codes. Each of the individual codes, in turn, contains a Chapter 1 with additional administrative provisions applicable to the specific matters covered by the particular code. Each of the separate codes reflects modifications to the I-Codes.

Section 28-101.4 contains the effective date provisions. The new codes will apply effective July 1, 2008, prospectively to all new construction. For a period of 1 year after the effective date, owners may elect to use the technical requirements of the 1968 building code for new buildings and for alterations of existing buildings. After that 1 year period, new construction must comply with the new codes. However, alterations of existing buildings, at the option of the owner, will be permitted to comply with the 1968 building code, with significant exceptions noted below that the Department determined are sufficiently important to public safety to be implemented immediately regardless of the choice of underlying code.

Provisions of Title 28 that apply to all codes should be cited as “28-section number.” The technical codes may be cited separately; provisions of each should be cited as “PC section number,” “BC section number,” “MC section number,” and “FGC section number.” Section 28-101.3 governs the interpretation of the various codes, sections, and subsections of the law by providing:

28-101.3 Codes. Any reference in this title to “this code” or “the code” shall be deemed to be a reference to this title and all of the codes comprising the *New York City Construction Codes* unless the context or subject matter requires otherwise. Whenever a section or subsection of this code is cited or referred to, subordinate consecutively numbered sections and subsections of the cited provision are deemed to be included in such reference unless the context or subject matter requires otherwise.

While the Department expects to promulgate new rules necessary to implement the new codes, Local Law 8 provides that existing rules are continued:

§28-103.20 Rules. Rules promulgated by the department in accordance with the law in effect prior to the effective date of this code shall remain in effect for the matters covered to the extent that such rules are not inconsistent with this code unless and until such rules are amended or repealed by the department.

Existing Buildings

While the ICC family of codes includes an existing building code, the Department determined to continue to allow compliance with the 1968 code as a first step in transitioning from the 1968 code to a new set of standards for all buildings. Once the codes regarding new construction are in place, the Department will turn to the development of an existing building code for the city, anticipated within the next 2 to 3 years. In the interim, at the owner’s option, existing buildings may be governed by either the new codes or the technical requirements of the 1968 building code. The latter option is subject to several important exceptions:

- Where permits were issued prior to July 1, 2008, construction will be governed by the laws in effect prior to July 1, 2008.
- As of July 1, 2008, except as otherwise limited by the commissioner, administration and enforcement will be in accordance with the new provisions, including but not limited to approval of construction documents, issuance of permits and certificates of occupancy, tests and inspections, penalties and enforcement. Controlled inspections and semi controlled inspections as referenced in the 1968 building code will be deemed to be special inspections and will be required to comply with the new provisions relating to special inspections. Materials regulated in their use by the 1968 building code will be required to comply with the new provisions.
- For permits issued after July 1, 2008, construction operations, including demolition, will be required to comply with the new construction codes.
- As of July 1, 2009, encroachments onto the public right-of-way will be governed by the new construction codes.

- As of July 1, 2009, appliances, equipment, and systems regulated by the plumbing, mechanical and fuel gas codes will be required to comply with the new construction codes.
- As of July 1, 2009, installation, alteration and additions to certain fire protection systems will be required to comply with the new construction codes.
- As of July 1, 2009, installation and alteration of certain elevators, conveyors, and amusement rides will be governed by the new construction codes.
- As of July 1, 2009, where the estimated cost of an alteration in any 12-month period exceeds 50 percent of the cost of replacement of the building or where there is a change in the main use or dominant occupancy of the building, facilities for people with physical disabilities must comport with the new construction codes.

The City did not enact a new residential code. The ICC's residential code covers one- and two-family dwellings three stories or less, whereas its building code covers all other new buildings. After reviewing the work product of the technical committees that developed the text, the Department concluded that the City could effectively address one- and two-family dwellings in the body of the building code itself. Accordingly, the new building code covers new construction of all building types.

Enforcement of Construction Codes and their Relationship to New York State Law

The Department is charged with the responsibility for enforcing the construction codes in the City. New York City Charter §643. Effective January 2003, New York State adopted its version of the I-Codes, but they do not govern in New York City. Executive Law §383. However, the City is subject to the *Energy Conservation Construction Code of New York State* ("Energy Code"). Accordingly, the Department enforces both the *New York City Construction Codes* as well as the State *Energy Code* in New York City.

Codes Maintenance

At the national level, the I-Codes are kept current through the review of proposed changes submitted to the ICC by code enforcement officials, industry representatives, design professionals and other interested parties. Proposed changes are considered through an open code development process in which all interested and affected parties may participate.

The Department is mandated by Local Law 33 to review the latest edition of the I-Codes and to suggest modifications for use within New York City. This cycle will help ensure that New York City maintains an updated set of construction codes far into the future. This revision cycle is anticipated to occur every 3 years.

Marginal and Other Markings

Solid vertical lines in the margins within the body of the codes indicate a technical change from the 2003 version of the I-Codes. Deletion indicators (➡) are provided in the margin where a paragraph or item has been deleted.

A double dagger (‡) within the body of the codes indicates text that is corrected from the enacted legislation for purposes of clarity. Substantive corrections will appear in future code revisions.

Indices

These codes do not include indices. An index for each of the individual codes will be available at a later date on the New York City Department of Buildings Website (<http://www.nyc.gov/html/dob>).