

REPORT FROM THE NEW YORK STATE SENATE

COMMITTEE ON INVESTIGATIONS AND GOVERNMENT OPERATIONS

CHAIR
SENATOR JAMES SKOUFIS



Final Investigative Report: Code Enforcement in New York State

AUGUST 5, 2019

This report was produced in coordination with the
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CONTENTS

I.	EXECUTIVE SUMMARY	3
II.	UNIFORM FIRE PREVENTION AND BUILDING CODE: OVERVIEW	7
III.	CODE COUNCIL	9
IV.	DEPARTMENT OF STATE RESPONSIBILITIES	11
V.	ADMINISTRATION & ENFORCEMENT OF THE UNIFORM CODE	16
VI.	MINIMUM STANDARDS FOR CODE ENFORCEMENT PROGRAMS	20
VII.	MINIMUM STANDARDS FOR CODE ENFORCEMENT PERSONNEL.....	27
VIII.	INVESTIGATORY PROCESS.....	30
IX.	CITY OF ALBANY.....	32
X.	CITY OF NEWBURGH.....	41
XI.	CITY OF MOUNT VERNON	47
XII.	TOWN OF RAMAPO.....	52
XIII.	INVESTIGATORY FINDINGS	61
XIII.A.	LOW PRIORITY OF CODE ENFORCEMENT.....	62
XIII.B.	INADEQUATE TRAINING OF CODE ENFORCEMENT PERSONNEL	64
XIII.C.	INADEQUATE RECORDKEEPING FOR TRACKING CODE CASES	67
XIII.D.	INSUFFICIENT PENALTIES FOR VIOLATIONS.....	68
XIII.E.	ISSUES ASSOCIATED WITH PROPERTIES OWNED BY LLCs.....	69

XIII.F.	PERSISTENT VACANT & ABANDONED BUILDINGS.....	70
XIII.G.	UPSURGE IN ILLEGALLY CONVERTED PROPERTIES.....	73
XIII.H.	EXCESSIVE DELAYS & ADJOURNMENTS OF CASES	78
XIII.I.	LACK OF RESOURCES	78
XIII.J.	MUNICIPALITY-SPECIFIC FINDINGS.....	80
XIV.	RECOMMENDATIONS	82
XIV.A.	FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS.....	84
XIV.B.	CODE COUNCIL VACANCIES.....	84
XIV.C.	RESPONSIBILITIES OF DEPARTMENT OF STATE.....	85
XIV.D.	PENALTIES FOR VIOLATIONS	88
XIV.E.	THREATS IMPOSED BY ILLEGAL CONVERSIONS	90
XIV.F.	ADEQUATE REMEDIES FOR NONCOMPLIANCE	92
XIV.G.	ACCOUNTABILITY OF LIMITED LIABILITY COMPANIES.....	95
XIV.H.	RENTAL PROPERTIES & TENANT PROTECTIONS.....	97
XIV.I.	VACANT & ABANDONED BUILDINGS.....	98
XIV.J.	MINIMUM STANDARDS FOR CODE ENFORCEMENT PERSONNEL.....	99
XIV.K.	CODE ENFORCEMENT ACTIVITIES OF COUNTIES.....	102
XIV.L.	TOWN OF HEMPSTEAD.....	104
XIV.M.	TOWN OF RAMAPO.....	106

I. EXECUTIVE SUMMARY

The enforcement of housing and building codes is fundamental to the safety and well-being of New York’s residents and first responders. However, it is evident that a culture of poor compliance has spread, plaguing communities throughout the State. Lenient code enforcement and compliance endangers the quality of life of a neighborhood and gravely threatens the safety of residents and first responders. Exposed wiring, no means of egress, illegal conversions, absence of working smoke and carbon monoxide detectors, and rodent infestations, are just the tip of the iceberg for egregious violations found in homes across New York State. It is the opinion of these Committees that government should be ensuring safe housing for its people.

In February of 2019, Senator James Skoufis, Chair of the Senate Standing Committee on Investigations & Government Operations, in coordination with Senator Brian Kavanagh, Chair of the Senate Standing Committee on Housing, Construction & Community Development, opened an investigation into the administration and enforcement of the Uniform Fire Prevention and Building Code (“Uniform Code”). Senator Skoufis and the members of the investigative team led the investigation in coordination with Senator Kavanagh. The two Committees held a joint public hearing and reviewed the investigation’s findings and recommendations, which are presented in this report on behalf of both Committees.¹

The investigation focused on four municipalities: the cities of Albany, Newburgh, and Mount Vernon, and the Town of Ramapo. The primary focus of the investigation was to uncover the difficulties of enforcing code, particularly in residential buildings, and identify legislative or

¹ Reference to the “Committees” within this report refers to the actions and opinions of a majority of Investigation and Government Operations Committee and Housing, Construction and Community Development Committee members.

² N.Y. Exec. Law § 371 (McKinney 2013). *See also* ADMINISTRATION AND ENFORCEMENT OF THE

regulatory recommendations for further action. The investigation sought to understand how code enforcement across New York State could be enhanced or assisted by the State. With an emphasis on public safety, the Committees wanted to ensure that every New Yorker could be confident that their home is free of significant threats to their health and safety and that every first responder can safely and efficiently perform their duties when called upon to enter a building.

The investigation included an in-depth evaluation of the code enforcement process in each of the four municipalities beginning with how a violation is brought to the attention of code enforcement departments to the final disposition of a code violation in court. The investigative team requested information and documents from the four municipalities, including, but not limited to, inspection data, history of summons and violations, standard operating procedures relating to investigating complaints, and testimony from first responders. In an effort to understand the diverse issues surrounding the satisfactory administration and enforcement of the Uniform Code, the team met with municipal officials, the State Division of Building Standards & Codes, tenant rights organizations, firefighter and builders coalitions, and landlord associations. Further, the team immersed themselves in the code enforcement process by participating in rides-along with police officers and code officials as well as observing the adjudication process of code court in each of the four municipalities. The investigative team also conducted a preliminary inquiry into the Town of Hempstead's Building Department. Finally, the joint public hearing was held on May 23, 2019, in the City of Newburgh to hear from interested stakeholders throughout the code enforcement process.

The Uniform Code is a regulation that prescribes requirements on building and construction within New York State. The Code Council, a seventeen-member body, is

responsible for periodically reviewing and amending the provisions of the Code. Local governments are responsible for the administration and enforcement of the Uniform Code with respect to buildings and structures located in the municipality. A local government's code enforcement program must perform its responsibilities in accordance with minimum standards established by the Department of State.

The Secretary of State is required to promulgate rules and regulations prescribing the minimum standards required for administration and enforcement of the Uniform Code in local governments. The regulations, included in Part 1201 through Part 1210 of Title 19 of the Rules and Regulations of the State of New York, set forth the requirements local governments must meet. Included in Part 1203 are the features a local government must incorporate into its code enforcement program. Those features include, but are not limited to, procedures relating to building permits, construction inspections, stop-work orders, certificates of occupancy, unsafe and unfit structures, operating permits, fire safety and property maintenance inspections, and recordkeeping.

While the Department of State is not required to enforce the Uniform Code within municipalities, it is empowered with certain oversight responsibilities. Article 18 of the Executive Law permits the Secretary of State to investigate whether local governments are administering and enforcing the Uniform Code in accordance with the minimum standards. If it is determined that a local government has failed to meet the minimum standards, the Secretary may take certain oversight actions, including issuing an order compelling compliance.

Upon conclusion of the investigation, the Committees find that the lack of prioritization of code enforcement in municipalities across the State is significantly contributing to the culture of poor compliance that ultimately endangers the lives of residents and first responders. With

respect to the enforcement of code, some municipalities lack the capacity to adequately enforce codes and others appear to lack the desire to enforce. Without enforcement credibility, the status quo of “act now, ask for forgiveness later” persists. Adequate deterrents do not exist, permitting bad actors to continue their hazardous behavior.

The enforcement of code must be a priority at all levels of government. The sufficient administration and enforcement of the Uniform Code requires all stakeholders to act harmoniously; the executive and legislative branches of the State, along with local governments, must collectively act to prioritize code enforcement again. We, as a State, must be proactive, rather than reactive. The time to address code enforcement is now; we cannot wait for another tragedy to occur.

The Committees recommend that the Legislature develop and pursue legislation addressing the necessary alterations to code enforcement. Article 18 of the Executive Law can be amended to enhance and assist the administration and enforcement of the Uniform Code. To deter violations and noncompliance, meaningful penalties that impose minimum and increased maximum fines must be incorporated. The veil of anonymity that shields limited liability companies (LLCs) from accountability for their violations must be removed. The remedies available to local governments to address noncompliance should be strengthened. Additionally, the State must reauthorize the appropriation of money available to support local governments’ code enforcement activities. Lastly, serious offenders must be held criminally liable for violations that place residents and first responders in imminent danger of injury or death.

Access to safe and secure housing is a fundamental right. Local governments are failing to protect their residents, and the State is disregarding its obligations to assist in code enforcement. Bad actors are preying on vulnerable populations, and the current system is failing

to stop their reckless behavior. There are several critical players involved in the code enforcement system, and a breakdown at any level can have severe consequences for a community. Code enforcement officials must diligently inspect properties and cite violations. Prosecutors must act aggressively to ensure that dangerous conditions are cured and that violators are held accountable. Presiding judges must adjudicate cases in a timely manner, ensuring that the disposition of a case acts to deter future offenders and violations. Lastly, local officials must demonstrate that the status quo of noncompliance will no longer be tolerated. Unless those responsible for enforcing the law, prosecuting the violations, and adjudicating the cases demand a culture of compliance, any legislative actions will prove futile.

II. UNIFORM FIRE PREVENTION AND BUILDING CODE: OVERVIEW

Prior to the adoption of the Uniform Code in 1984, the enforcement of a building or fire prevention code was left entirely to the discretion of local municipalities. Many municipalities, primarily those in urban, densely populated areas of New York, adopted and enforced such codes.² However, in extensive areas of New York, mostly in rural regions, no such code was in effect.³ The previous system of fire protection and building construction was characterized as a “lack of adequately trained personnel, as well as inconsistent qualifications for personnel who administer and enforce” the existing codes.⁴ Moreover, individually determined municipal

² N.Y. Exec. Law § 371 (McKinney 2013). *See also* ADMINISTRATION AND ENFORCEMENT OF THE UNIFORM FIRE PREVENTION AND BUILDING CODE AND THE STATE ENERGY CONSERVATION CONSTRUCTION CODE, TECHNICAL SERIES, NEW YORK STATE DEPARTMENT OF STATE, DIVISION OF LOCAL GOVERNMENT SERVICES 1 (2018) [hereinafter TECHNICAL SERIES, DIVISION OF LOCAL GOVERNMENT SERVICES].

³*Id.*

⁴ N.Y. Exec. Law § 371 (McKinney 2013).

requirements, jurisdictional overlaps, business uncertainties, and in some instances, artificially induced high construction costs, contributed to the inadequate administration and enforcement of code requirements.⁵

In light of the perils posed to public health and safety by fires and inadequate building construction to public health and safety, the State Legislature, pursuant to Chapter 707 of the Laws of 1981, adopted Article 18 of the Executive Law to provide for an integrated and comprehensive building and fire prevention code. Known as the New York State Uniform Fire Prevention and Building Code Act (“Uniform Code”), the Act prescribes statewide minimum standards for both fire prevention and building construction. In addition to promoting safety, a primary purpose of formulating the Uniform Code was “to provide basic and uniform performance standards thereby reducing excessive constructions costs.”⁶

The Uniform Code, which took effect in 1984, encompasses Sections 370 through 383 of Article 18 of the Executive Law. The Uniform Code is applicable to all municipalities in New York State except for the City of New York.⁷ It includes sections for residential construction, non-residential building construction, plumbing, mechanical systems, fuel gas equipment and systems, fire prevention, property maintenance, regulations for existing buildings predating the code, and other miscellaneous provisions. The Uniform Code is based on the International Code Council (ICC) model codes, with customized amendments developed and adopted through a state rulemaking process.

The “State Fire Prevention and Building Code Council” or “Code Council,” within the Department of State, is responsible for developing and maintaining the provisions of the Uniform

⁵*Id.*

⁶ *Major v. Waverly & Ogden, Inc.*, 7 N.Y.2d 332 (1960).

⁷ The City of New York maintains its own separate building and housing code standards.

Code.⁸ The Secretary of State is charged with promulgating rules and regulations establishing the minimum standards necessary for a local government’s program of administration and enforcement of the Uniform Code.⁹ The primary responsibility for enforcing the Uniform Code falls to individual municipalities—cities, towns, and villages.

III. CODE COUNCIL

Created pursuant to Executive Law § 374, the State Fire Prevention and Building Code Council, or “Code Council,” is responsible for formulating and maintaining the provisions of the statewide Uniform Code.¹⁰ The Code Council has the ability to amend the Uniform Code, but the Secretary of State must approve any amendment proposed by the Code Council prior to it becoming effective.¹¹

The Code Council consists of seventeen members, including the Secretary of State, as chairperson, the State Fire Administrator, and fifteen other members appointed by the Governor pursuant to statute.¹² Of those fifteen, two members must be among a list of commissioners from the following State departments: Economic Development, Corrections and Community Supervision, Education, Health, Labor, Mental Health and Social Services, General Services, Housing and Community Renewal, and Financial Services.¹³ Six members must be elected officials respectively representing: a city with a population of over one million, a city with a population over one hundred thousand, any other city, a county government, a town government,

⁸ N.Y. Exec. Law § 377 (McKinney 2013).

⁹ N.Y. Exec. Law § 381 (McKinney 2013).

¹⁰ N.Y. Exec. Law § 377 (McKinney 2013).

¹¹ *Id.*

¹² N.Y. Exec. Law § 374 (McKinney 2013).

¹³ N.Y. Exec. Law § 374(1)(a) (McKinney 2013).

and a village government.¹⁴ The remaining seven members require Senate confirmation, and must include a fire service official, a registered architect, a professional engineer, a code enforcement official, a builders' representative, a trade union representative, and an individual with a disability.¹⁵

While Executive Law § 374 prescribes term lengths for each category of member, the statute does not mandate any time requirements for refilling vacancies. At the investigation's onset, there were six (6) vacant positions on the Code Council.

Pursuant to Executive Law, the Code Council is required to meet at least four times a year.¹⁶ Meetings are open to the public. Periodically, the Uniform Code requires revisions; since it is a regulation, promulgated by the Secretary of State, any proposed revisions or amendments by the Code Council must be adopted pursuant to the rule making process set forth in the State Administrative Procedure Act.¹⁷ Any amendment becomes effective 90 days after publication of the notice of adoption in the New York State Register; however, the Code Council can designate an earlier effective date if it is necessary for the protection of health, safety and security.¹⁸

Executive Law §§ 377 and 378 dictate standards that the provisions of the Uniform Code must address. Such standards relate to the construction of new buildings and structures, the maintenance and rehabilitation of existing buildings, the safeguarding of life and property, and the installation and maintenance of fire protection equipment and systems.¹⁹ The Uniform Code's standards must include:

¹⁴ N.Y. Exec. Law § 374(1)(b) (McKinney 2013).

¹⁵ N.Y. Exec. Law § 374(1)(c) (McKinney 2013).

¹⁶ N.Y. Exec. Law § 374(3) (McKinney 2013).

¹⁷ TECHNICAL SERIES, DIVISION OF LOCAL GOVERNMENT SERVICES, *supra* note 2, at 4.

¹⁸ N.Y. Exec. Law § 378(15)(a) (McKinney 2013)

¹⁹ N.Y. Exec. Law § 378 (McKinney 2013).

- 1) Standards for the construction of all buildings and classes of buildings, and the installation of equipment therein;
- 2) Standards for materials used in the construction of buildings and installation of equipment;
- 3) Standards for safety and sanitary conditions;
- 4) Standards for the condition, occupancy, maintenance, conservation, rehabilitation and renewal of certain existing buildings;
- 5) Standards for the safeguarding of life and property in existing buildings from certain hazards including fire;
- 6) Standards for areas of public assembly;
- 7) Standards for hotels, motels, and lodging houses; and
- 8) Standards for the installation of carbon monoxide detectors and smoke detection alarm devices.²⁰

A comprehensive list of standards that must be addressed in the Uniform Code, pursuant to Executive Law § 378, is included as Exhibit A.

IV. DEPARTMENT OF STATE RESPONSIBILITIES

Article 18 of the Executive Law vests in the Department of State the authority and responsibility of ensuring local governments are sufficiently administering and enforcing the Uniform Code. Most notably, the Secretary of State is responsible for (1) promulgating the

²⁰*Id.*

minimum standards that local governments’ code enforcement programs must meet and (2) prescribing the minimum standards for training and qualifications of code enforcement personnel. Additionally, the Secretary of State is charged with administering a program of local assistance to aid local governments’ code enforcement programs.²¹

The Division of Building Standards & Codes (“the Division”) within the Department of State is responsible for monitoring and ensuring the local governments are meeting the minimum standards required for the administration and enforcement of the Uniform Code.²² The Division provides services related to the Uniform Code, including assisting the Code Council with the development and adoption of amendments to the Uniform Code, offering technical assistance to municipalities and agencies, overseeing applications for variances, and performing oversight of code enforcement practices.²³ The Division’s Educational Services Unit provides the basic training required for initial certification as a code enforcement official and develops in-service training and continuing education programs.²⁴

IV.A. 19 NYCRR PARTS 1201-1210

In response to the directives included in Article 18 of the Executive Law—the New York State Uniform Fire Prevention and Building Code Act—the Secretary of State adopted 19 NYCRR Parts 1201 through 1210, which set forth the rules and regulations a local government program must meet for the administration and enforcement of the Uniform Code.

- Part 1201 relates to procedures for certain classes of buildings;

²¹ N.Y. Exec. Law §§ 376-a, 380 & 381 (McKinney 2013).

²² The Codes Division also oversees the subsequently adopted Energy Conservation Construction Code.

²³ TECHNICAL SERIES, DIVISION OF LOCAL GOVERNMENT SERVICES, *supra* note 2, at 4.

²⁴ *Id.*

- Part 1202 relates to the administration and enforcement of the Uniform Code where local governments have declined administration and enforcement responsibilities;
- Part 1203 prescribes the minimum standards for the administration and enforcement of the Uniform Code;
- Part 1204 relates to the administration and enforcement by State agencies;
- Part 1205 establishes procedures for a variance or modification of the Uniform Code in certain cases where strict compliance is inappropriate;
- Part 1206 establishes procedures for assistance to local governments for code enforcement activities pursuant to State Finance Law § 54-g;
- Part 1207 establishes procedures through which municipalities may apply for reimbursement for training costs associated with code activities;
- Part 1208 prescribes the minimum standards required for the training and qualifications of code enforcement personnel;
- Part 1209 provides regulations and fees for factory manufactured homes;
- Part 1210 establishes procedures related to manufactured homes.²⁵

Based on the scope and findings of the investigation, Parts 1203 and 1208 are the primary targets of legislative and regulatory recommendations. An in-depth discussion of Parts 1203 and 1208 are included in Sections VI and VII, respectively.

²⁵ 19 NYCRR 1201-1210 (2019).

IV.B. MINIMUM STANDARDS FOR CODE ENFORCEMENT PROGRAMS

Executive Law § 381 directs the Secretary of State to promulgate rules and regulations prescribing the minimum standards local governments must adhere to for the administration and enforcement of the Uniform Code. While the provisions of the Uniform Code relating to building construction and fire prevention are uniform throughout the state, municipal programs responsible for enforcing such standards are not required to be uniform, as long as they meet the minimum standards promulgated.²⁶ In prescribing the minimum standards, the Secretary of State must include rules and regulations that address the following:

- 1) Frequency and adequacy of mandatory inspections for compliance with the uniform code;
- 2) Number and qualifications of staff, including certification requirements;
- 3) Required minimum fees for administration and enforcement;
- 4) Adequacy of means for insuring compliance;
- 5) Procedures for variances or modifications of Uniform Code in certain circumstances where strict compliance would “entail practical difficulties or unnecessary hardship or would otherwise be unwarranted[;]”
- 6) “Procedures for inspection of certain classes of buildings based upon design, construction, ownership, occupancy or use[;]”
- 7) Minimum basic training and in-service training requirements for code enforcement personnel.²⁷

²⁶ *About the Division of Building Standards and Codes*, NEW YORK STATE DEPARTMENT OF STATE.

²⁷ N.Y. Exec. Law § 381 (McKinney 2013).

In response to this directive, the Secretary of State adopted 19 NYCRR 1203. Part 1203 provides that a code enforcement program must include certain features relating to the designation of responsibility for enforcement, procedures for permissible building construction, policies addressing non-compliance and unsafe structures, inspection procedures and criteria, complaint and notification policies, and recordkeeping procedures.²⁸ Local governments are also required to submit annual reports of code enforcement activities to the Secretary of State.²⁹ Part 1203 also includes additional features relating to remedies for a party's noncompliance with the Uniform Code.³⁰ An in-depth analysis of the minimum standards for a code enforcement program is provided in Section VI of this report.

IV.C. MINIMUM STANDARDS FOR CODE ENFORCEMENT PERSONNEL

Sections 376-a and 381 of the Executive Law permit the Secretary of State to establish rules and regulations with respect to the qualifications and requirements of personnel charged with enforcement of the Uniform Code. The Secretary may set standards for training programs, courses of study, minimum training and examination requirements, minimum in-service training, and classifications of advanced in-service training.³¹ Pursuant to these directives, the Secretary of State adopted 19 NYCRR 1208, which delineates the minimum standards for code enforcement officials. An in-depth analysis of the minimum standards is provided in Section VII of this report.

²⁸ 19 NYCRR 1203.3 (2019).

²⁹ 19 NYCRR 1203.4 (2019).

³⁰ 19 NYCRR 1203.5 (2019).

³¹ N.Y. Exec. Law §§ 376-a, 381 (McKinney 2013).

IV.D. PROGRAM OF LOCAL ASSISTANCE

Executive Law § 380 directs the Secretary of State to establish a program of local assistance for the purpose of aiding municipalities in their code enforcement activities.³² The local assistance program must conform to the requirements of Section 54-g of the Finance Law.³³ State Finance Law § 54-g permits local governments to apply for money from the State in support of activities related to the administration and enforcement of the Uniform Code.³⁴ In response to the mandate, the Secretary of State adopted 19 NYCRR Part 1206, which establishes a program through which municipalities may apply for financial aid available under State Finance Law § 54-g. However, the distribution of money through this program has not occurred since 1991.³⁵

V. ADMINISTRATION & ENFORCEMENT OF THE UNIFORM CODE: LOCAL GOVERNMENTS

Although developing and promulgating the rules and regulations of the Uniform Code is a State responsibility, Executive Law § 381 directs that local governments are responsible for the actual administration and enforcement of the Uniform Code with respect to buildings within their jurisdiction. While local governments must establish a code enforcement program by local law, ordinance, or other appropriate legislative action, the Uniform Code—or any subsequent amendment—does not need to be affirmatively adopted by a local government; it is immediately effective by directive of the State Legislature.

³² N.Y. Exec. Law § 380 (McKinney 2013).

³³ *Id.*

³⁴ N.Y. St. Fin. Law § 54-g (McKinney 2013).

³⁵ *See* Section XIII.I.

To support the necessary work of enforcing code, Executive Law § 381 permits local governments and counties to charge fees to defray the costs of administration and enforcement. Additionally, two or more local governments have the option to provide for the joint administration and enforcement of the Uniform Code. Any local government can also enter into an agreement with the county in which it is situated to administer and enforce the Uniform Code.

Pursuant to Executive Law § 382, local governments have statutory remedies to assist with issues of non-compliance with the Uniform Code. Local governments and their authorized agents may seek criminal, civil or administrative remedies to support their enforcement activities. Local governments may also seek injunctive relief from the appropriate State Supreme Court.³⁶

V.A. OPTION TO “OPT-OUT” OF CODE ENFORCEMENT

While a local government—a city, town, or village—cannot exempt buildings within its jurisdiction from the provisions of the Uniform Code, Executive Law § 381 allows a local government to relinquish its responsibilities by enacting a law essentially “opting out” of code enforcement activities. The local government must enact the law relinquishing responsibility by July 1 of each calendar year. In this event, the responsibility for enforcement passes to the county in which the local government is located.³⁷

Similarly, county governments are generally responsible for enforcing the Uniform Code for buildings within their custody, but a county may enact a local law providing it will not do so.³⁸ In such event, the Secretary of State is responsible—either directly or by contract—for

³⁶ N.Y. Exec. Law § 382(3) (McKinney 2013).

³⁷ N.Y. Exec. Law § 381 (McKinney 2013).

³⁸ *Id.*

enforcing the Uniform Code for buildings in the custody of the county.³⁹ This county opt-out pertains only to buildings in the custody of the county government itself, not to other buildings within the county for which the county may be responsible for enforcing the Uniform Code, including those for which responsibility for enforcement has passed to the county because a local government has exercised its option to opt out.

A local government or a county may repeal the law that enables their choice to “opt-out” of the code enforcement.⁴⁰ Currently, the following twelve (12) counties have “opted out” of their code enforcement responsibilities with respect to county buildings: Allegheny, Cattaraugus, Chautauqua, Clinton, Greene, Hamilton, Herkimer, Madison, Oneida, Saratoga, Schoharie, and St. Lawrence.⁴¹ A comprehensive list of local governments that have opted out of administering and enforcing the Uniform Code is provided as Exhibit B.

V.B. STATE OVERSIGHT OF LOCAL GOVERNMENTS’ ENFORCEMENT

While the primary responsibility of administering and enforcing the Uniform Code remains in the hands of local governments, the Secretary of State has the power—and arguably the obligation—to investigate and ensure that code enforcement programs are meeting the minimum standards promulgated pursuant to Executive Law § 381.

Section 381 of the Executive Law empowers the Secretary of State to investigate and conduct hearings related to whether a local government’s code enforcement program complies with the required minimum standards.⁴² If the Secretary determines a code enforcement program

³⁹*Id.*

⁴⁰*Id.*

⁴¹ Response from Linda Baldwin, General Counsel, Department of State, to Investigations and Government Operations regarding testimony of John Addario (June 6, 2019) (on file with author).

⁴² N.Y. Exec. Law § 381(3) (McKinney 2013).

has failed to comply with the minimum standards required, the Secretary must take certain actions, either individually or in combination, including:

- 1) Issuing an order compelling compliance with the minimum standards;
- 2) Asking the Attorney General to institute an action or proceeding seeking appropriate legal or equitable relief to require administration and enforcement;
- 3) Designating the county in which the local government is located to administer and enforce the Uniform Code for the buildings within the local government's jurisdiction; and
- 4) Administering and enforcing the Uniform Code in place and instead of the local government.⁴³

If the Secretary of State designates a county to perform the administration and enforcement of the Uniform Code in place of a local government, the local government is prohibited from charging and collecting fees for such activities; rather, the county is permitted to charge and collect fees for enforcement related activities performed within that jurisdiction.⁴⁴ Similarly, these same procedures are applicable if the Secretary of State has assumed the authority for administering and enforcing the Uniform Code in the place of a county.⁴⁵ Once the Secretary is satisfied that a local government or county is capable of performing its responsibilities in compliance with the minimum standards, the Secretary shall designate it to resume code enforcement activities.⁴⁶

⁴³ N.Y. Exec. Law § 381(4) (McKinney 2013).

⁴⁴ N.Y. Exec. Law § 381(5) (McKinney 2013).

⁴⁵ N.Y. Exec. Law § 381(5) (McKinney 2013).

⁴⁶ *Id.*

VI. MINIMUM STANDARDS FOR CODE ENFORCEMENT PROGRAMS

The Secretary of State, pursuant to Executive Law § 381, is responsible for promulgating rules and regulations prescribing the minimum standards that local code enforcement programs must meet for the administration and enforcement of the Uniform Code. Pursuant to that directive, the Secretary of State adopted 19 NYCRR Part 1203.

The Secretary of State determined that for a local government to meet the minimum standards, its code enforcement program must—at a bare minimum—incorporate several features. The features relevant to this investigation are highlighted in this report.

VI.A. FEATURES REQUIRED BY PART 1203

1. DESIGNATION OF RESPONSIBILITY FOR CODE ENFORCEMENT

Part 1203 mandates that every local government provide for the administration and enforcement of the Uniform Code by implementing and accounting for the features in its local code enforcement program through legislation or other appropriate means.⁴⁷

Section 1203.2(a) of Part 1203 states:

“Every city, village, town, and county, charged under subdivision 2 of section 381 of the Executive Law with administration and enforcement of the Uniform Code shall provide for such administration and enforcement by local law, ordinance or other appropriate regulation. Any such instrument or combination thereof shall include the features described in section 1203.3 of this Part.”

Further, Part 1203 specifies that “[t]he persons, offices, departments, agencies or combinations thereof authorized and responsible for administration and enforcement of the

⁴⁷ 19 NYCRR 1203.3 (2019).

Uniform Code, or any portion thereof, shall be clearly identified.”⁴⁸ Thus, every municipality must empower its code enforcement program with the authority to enforce the provisions of the Uniform Code. Local officials have discretion in deciding how to incorporate it into their local code enforcement program, whether by incorporating the provisions of the Uniform Code directly into the municipal code or empowering the municipality to enforce all laws and ordinances—state or otherwise—relative to housing and buildings.⁴⁹

A local government has discretion in determining the organizational approach of its administration and enforcement of the Uniform Code; it may divide responsibility for enforcement between various persons or departments, may utilize an existing division or department, or may establish a new department.⁵⁰ A local government may use outside contractors to provide services in connection with portions of its code enforcement activities so long as the local government ensures any such provider has qualifications comparable to the minimum standards of training and certifications promulgated by the Secretary of State.⁵¹

2. BUILDING PERMITS

A code enforcement program must require building permits for any work that is required to conform to the Uniform Code.⁵² Part 1203 permits exceptions for certain categories of work. However, even if a local government decides to exclude such work from the building permit requirement, all work must still comply with the Uniform Code. A local government may elect to require permits for all categories of work.⁵³

⁴⁸*Id.*

⁴⁹TECHNICAL SERIES, DIVISION OF LOCAL GOVERNMENT SERVICES, *supra* note 2, at 7.

⁵⁰*Id.* at 9.

⁵¹*Id.*

⁵² 19 NYCRR 1203.3(a) (2019).

⁵³*Id.*

Part 1203 requires that a building permit be revoked or suspended if it was issued in error due to incorrect, inaccurate or incomplete information, or if the work for which the permit was issued violates the Uniform Code.⁵⁴

3. CONSTRUCTION INSPECTIONS

A code enforcement program must require inspections of projects at different stages of the construction process.⁵⁵ Building permit holders are required to keep the work site accessible and exposed until inspected and accepted by the code enforcement program.⁵⁶

4. STOP WORK ORDERS

A local government's code enforcement program must implement procedures for the issuance of stop work orders to halt any work that is "contrary to the provisions of the Uniform Code, or is being conducted in a dangerous or unsafe manner, or is being performed without obtaining a required permit."⁵⁷ A stop work order must specify the reason for its issuance and the conditions that must be addressed and satisfied before the work will be permitted to resume.⁵⁸

5. CERTIFICATES OF OCCUPANCY AND COMPLIANCE

A local government's code enforcement program must require the issuance of a certificate of occupancy or a certificate of compliance for (1) any work that is the subject of a building permit, and (2) all buildings that are converted from one use or occupancy to another.⁵⁹ Prior to using or occupying premises that were the subject of a building permit, a certificate of occupancy or compliance must first be issued.⁶⁰ Before issuing a certificate of occupancy or compliance, the code enforcement program must (1) inspect the building or work, and (2)

⁵⁴*Id.*

⁵⁵ 19 NYCRR 1203.3(b) (2019).

⁵⁶*Id.*

⁵⁷ 19 NYCRR 1203.3(c) (2019).

⁵⁸*Id.*

⁵⁹ 19 NYCRR 1203.3(d) (2019).

⁶⁰*Id.*

receive, where applicable, a written statement of structural observations and/or a final report of special inspections.⁶¹

A local code enforcement program may authorize the issuance of a temporary certificate of occupancy of a structure prior to the completion of work, so long as the structure can be occupied safely, fire detection and protection equipment is installed and operational, and all required means of egress have been provided.⁶²

If a certificate has been issued in error or on the basis of incorrect information, the local government's code enforcement program must provide for the suspension or revocation of the certificate if the deficiencies are not corrected within a specified period of time.⁶³

6. FIRE SAFETY & PROPERTY MAINTENANCE INSPECTIONS

A code enforcement program must establish inspection procedures for fire safety and property maintenance of all buildings of public assembly, multiple dwellings, and nonresidential occupancies.⁶⁴ Buildings of public assembly and dormitory buildings must be inspected at least once a year; all other multiple dwellings and nonresidential occupancy buildings must be inspected at least once every three years.⁶⁵

The minimum standards proscribed by the Secretary of State do not provide for the fire safety and property maintenance inspections of one- and two-family dwellings. Inspections of those buildings are limited to situations where conditions threaten or present a hazard to public

⁶¹ 19 NYCRR 1203.3(d) (2019).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ 19 NYCRR 1203.3(h) (2019).

⁶⁵ *Id.*

health, safety, or welfare.⁶⁶ While some communities have voluntary home fire inspection programs, participation in such programs is left to the discretion of the homeowner or landlord.⁶⁷

7. PROCEDURES FOR UNSAFE STRUCTURES AND EQUIPMENT

The minimum standards require a local code enforcement program to establish procedures “for identifying and addressing unsafe structures and equipment.”⁶⁸ The substance and content of the procedures are left entirely to the discretion of the local government.

8. COMPLAINT PROCEDURES

Local governments must also establish procedures for complaints that assert that conditions or activities fail to comply with the Uniform Code or other relevant laws enacted for the administration and enforcement of the Uniform Code.⁶⁹ Procedures must include, when appropriate, provisions for inspection of the conditions or activities alleged to be in violation.⁷⁰

9. RECORDKEEPING PROCEDURES

The minimum standards require code enforcement programs to establish and maintain a system of records for the features and activities specified pursuant to Part 1203 as well as fees charged and collected pursuant to code enforcement activities.⁷¹ The minimum standards, however, do not establish a uniform system of recordkeeping for local code enforcement programs; Part 1203, rather, affords local governments complete discretion in determining which system to establish and maintain.

⁶⁶TECHNICAL SERIES, DIVISION OF LOCAL GOVERNMENT SERVICES, *supra* note 2, at 16.

⁶⁷*Id.*

⁶⁸ 19 NYCRR 1203.3(f) (2019).

⁶⁹ 19 NYCRR 1203.3(i) (2019).

⁷⁰ 19 NYCRR 1203.3(k) (2019).

⁷¹*Id.*

10. PROGRAM REVIEW AND REPORTING

Every local government administering and enforcing the Uniform Code is required to submit an annual report to the Secretary of State regarding the local government's code enforcement activities.⁷² Part 1203 permits the Department of State to request the mandatory submission of records and related materials of its activities in connection with code enforcement.⁷³ Failure to produce the requested materials permits an inference that the local government has not met the minimum standards pursuant to Part 1203.⁷⁴

11. REMEDIES

While local governments are encouraged to strive for quick correction of violations through voluntary compliance, enforcement officials may face a party who fails or refuses to comply with the Uniform Code.⁷⁵ Thus, enforcement programs must establish procedures to address issues of noncompliance.⁷⁶ Executive Law § 382 empowers local governments to use civil, criminal, and administrative remedies to ensure compliance with the Uniform Code.

Local governments and their authorized agents may seek criminal sanctions for violations of the Uniform Code through the issuance of an order to remedy.⁷⁷ Any party who fails to comply with an order to remedy is punishable by a fine not exceeding \$1,000 per day of violation, or imprisonment not exceeding one year, or both.⁷⁸ Local governments may also seek to impose the same penalties against any party that knowingly violates any provisions of the Uniform Code.⁷⁹ The Secretary of State, in Part 1203, fixes the time within which a party must

⁷² 19 NYCRR 1203.4 (2019).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ TECHNICAL SERIES, DIVISION OF LOCAL GOVERNMENT SERVICES, *supra* note 2, at 19.

⁷⁶ *Id.*

⁷⁷ N.Y. Exec. Law § 382(2) (McKinney 2013).

⁷⁸ *Id.*

⁷⁹ *Id.*

comply at 30 days from the date of the order to remedy.⁸⁰ Local governments are permitted to issue orders to remedy that require immediate commencement of corrective action or within a period less than 30 days.⁸¹ Part 1203 also requires local code enforcement programs to serve an order to remedy personally, by certified or registered mail, within five days of the date of the order.⁸²

The minimum standards promulgated by the Secretary of State do not impose mandatory procedures for correcting code violations in the absence of voluntary compliance.⁸³ This feature is left to the discretion of local governments and enforcement officials. Part 1203, however, delineates enforcement methods that a local government is empowered to utilize if, in the judgment of the local government or enforcement officials, they believe violations cannot be addressed by the use of other enforcement tools or by other means.⁸⁴ Administrative enforcement methods include issuing notices of violations, appearance tickets and stop work orders, revoking or suspending building permits, operating permits and/or certificates of occupancy, and condemning or placarding a building.⁸⁵ Part 1203 also allows local governments to enact laws or ordinances—and commence and prosecute actions—that impose criminal and/or civil sanctions for violations of the Uniform Code.⁸⁶

Local governments are also permitted to seek injunctive relief from a justice of the Supreme Court of the State of New York ordering either the removal of the building or an abatement of any conditions in violation of the Uniform Code.⁸⁷

⁸⁰ 19 NYCRR 1203.4(c) (2019).

⁸¹ 19 NYCRR 1203.4(f) (2019).

⁸² 19 NYCRR 1203.4(e) (2019).

⁸³ TECHNICAL SERIES, DIVISION OF LOCAL GOVERNMENT SERVICES, *supra* note 2, at 19.

⁸⁴ 19 NYCRR 1203.4(g) (2019).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ N.Y. Exec. Law § 382(3) (McKinney 2013).

VI.B. ANALYSIS OF THE MINIMUM STANDARDS

The required features delineated in 19 NYCRR Part 1203 are the “minimum standards” a local government’s code enforcement program must meet. Enforcement programs are required to incorporate those features, but are not required to integrate a uniform enforcement program across municipalities. This permits accommodating varying levels of need in different municipalities. Standards and procedures relating to the imposition of fees for violations are entirely within the discretion of local governments. The lack of uniformity among code enforcement programs across New York often leads to obstacles in the sufficient administration and enforcement of the Uniform Code. Moreover, many interested stakeholders believe the “minimum standards” promulgated by the Secretary of State are insufficient, and do not adequately protect the health and safety of New York residents.

VII. MINIMUM STANDARDS FOR CODE ENFORCEMENT PERSONNEL

Executive Law §§ 376-a and 381 authorize the Secretary of State to promulgate rules and regulations with respect to the qualifications and training requirements of personnel responsible for the administration and enforcement of the Uniform Code. In response, the Secretary of State adopted 19 NYCRR 1208, which delineates the “minimum standards” building safety inspectors and code enforcement officials must meet prior to performing code enforcement activities. While the Secretary of State is tasked with promulgating the minimum standards required of code

enforcement personnel, a local government, county, or State agency is responsible for providing opportunities for the training and certification of their code enforcement personnel.⁸⁸

Pursuant to Part 1208, no individual may perform any enforcement activity without satisfying the minimum training requirements applicable to the activity.⁸⁹ There are two levels of enforcement activities: building safety inspector and code enforcement official.⁹⁰ A building safety inspector only performs fire safety and property maintenance inspections on existing buildings, whereas a code enforcement official performs any enforcement activity.⁹¹

Part 1208 requires that building safety inspectors and code enforcement officials be certified in order to perform code enforcement activities on behalf of a municipality. However, a person who has commenced, but not completed, the required basic training program, may perform activities during their basic training period so long as (1) the local government has designated such person to perform enforcement activities on behalf of the local government and (2) the person is progressing toward completion of the basic training program at a rate which will assure the local government that they will complete the program within the training period.⁹²

To be certified as a building safety inspector, an individual must complete the basic training program, which includes at least 60 hours of training in certain topics selected by the Secretary of State.⁹³ To be certified as a code enforcement official, an individual must complete the basic training program, which comprises 120 hours of training, including the 60-hour building safety inspector program, and at least an additional 60 hours of training in certain topics

⁸⁸ 19 NYCRR 1208-2.2(a) (2019).

⁸⁹ 19 NYCRR 1208-2.1(a) (2019).

⁹⁰ *Id.*

⁹¹ 19 NYCRR 1208-1.2(b),(e) (2019).

⁹² 19 NYCRR 1208-2.2(b)(1)-(2) (2019).

⁹³ 19 NYCRR 1208-3.2(b) (2019).

selected by the Secretary of State.⁹⁴ While Part 1208 prescribes the minimum standards of training and qualifications required to perform certain code enforcement activities, a local government may impose more stringent training requirements for its enforcement personnel.⁹⁵

Pursuant to Part 1208, an individual must complete his or her basic training program within 18 months of the date on which he or she attends the first training course included in that program.⁹⁶ However, a person who is employed by a local government as a building safety inspector or a code enforcement official prior to the completion of the applicable training program must complete it within the shorter of: (1) 18 months after the first date on which he or she attended the first training course included in the program or (2) 18 months after the date of his or her initial appointment as a building safety inspector or as a code enforcement official.⁹⁷

To maintain certification, building safety inspectors and code enforcement officials must complete in-service trainings. Building safety inspectors must complete a minimum of six hours of in-service training each year following their initial certification; code enforcement officials must complete a minimum of 24 hours of in-service training each year following their initial certification.⁹⁸ The Secretary of State is permitted to mandate additional advanced in-service training for code enforcement personnel.⁹⁹

If an individual fails to satisfy his or her in-service training requirements during any calendar year, the Secretary of State must designate their certification as “inactive.”¹⁰⁰ The Secretary of State may revoke a certification if it is determined, after notice and an opportunity to be heard, that such individual (1) did not actually attend and participate in any class required

⁹⁴ 19 NYCRR 1208-3.2(c) (2019).

⁹⁵ 19 NYCRR 1208-2.1(d) (2019).

⁹⁶ 19 NYCRR 1208-3.2(d) (2019).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ 19 NYCRR 1208-3.5(a) (2019).

by the basic training program or in-service training course or (2) achieved a passing grade on the examination in any required basic training course or in-service course by fraudulent or dishonest means.¹⁰¹

Section 376-a of the Executive Law requires the Secretary of State to promulgate rules and regulations with respect to the revocation or suspension of a certification of any code enforcement personnel found—after a hearing by an Administrative Law Judge—to have materially failed to uphold duties of a code enforcement officer.¹⁰² A material failure in duty includes, but is not limited to, making material errors or omissions on an inspection report.¹⁰³ The comprehensive list of material failures pursuant to Part 1208-6.2 is provided in Exhibit C.

VIII. INVESTIGATORY PROCESS

To adequately examine the difficulties municipalities face in administering and enforcing the Uniform Code, the investigative team directed its efforts to four municipalities chosen for their unique hardships: the cities of Albany, Newburgh, and Mount Vernon, and the Town of Ramapo. The investigation included an in-depth evaluation of the code enforcement processes in each of the municipalities, from the beginning—how a violation is reported—to the end—how a violation is finally resolved.

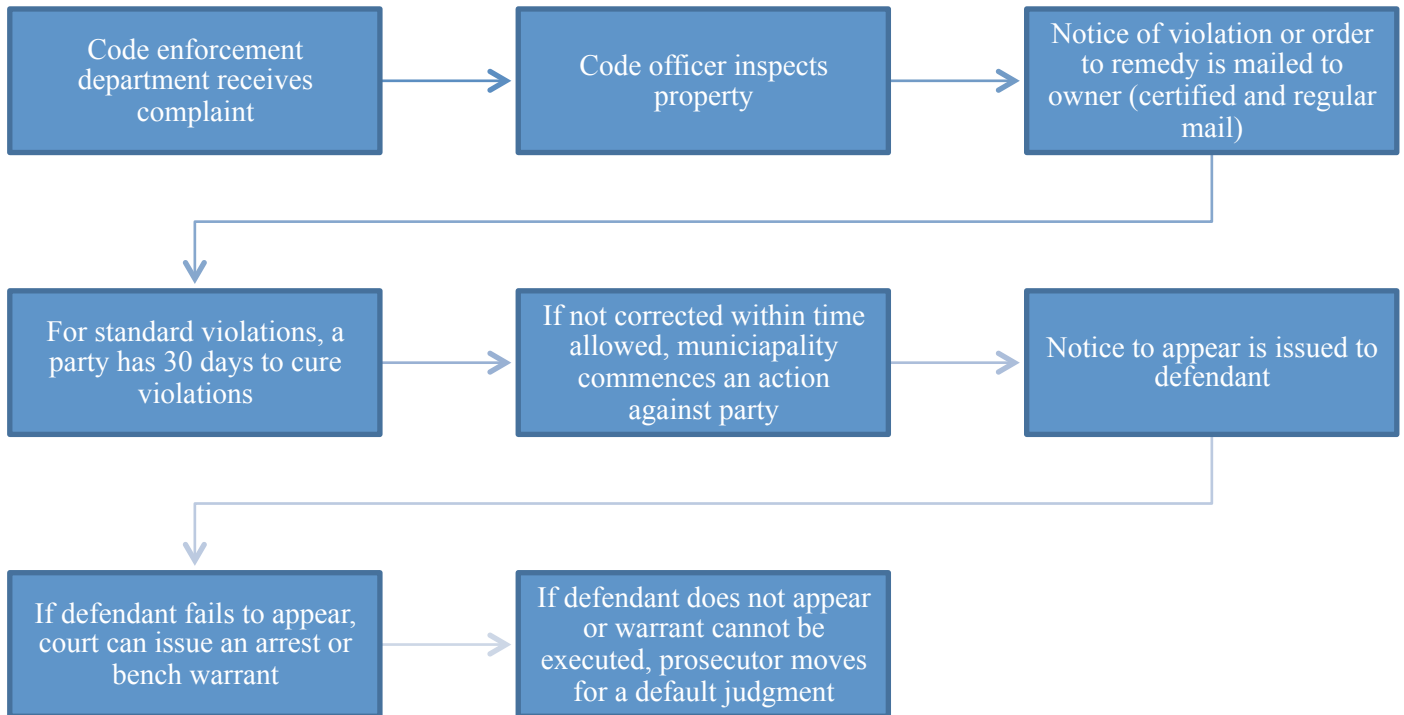
The investigative team requested information and documents from the four municipalities relating to their code enforcement activities, including but not limited to: inspection data, summons and violations histories, and standard operating procedures and policies. Further, to

¹⁰¹ 19 NYCRR 1208-3.5(b) (2019).

¹⁰² 19 NYCRR 1208-6.1(a) (2019).

¹⁰³ *Id.*

understand the daily difficulties of enforcing code on the ground, the team participated in rides-along with police officers, code officials and firefighters, and observed the adjudication process of violations in code court. The figure below demonstrates the typical code enforcement process for an alleged violation.



After a comprehensive review and consideration of all investigatory materials, the investigative team has focused its analysis of the administration and enforcement of code on the following aspects: (1) standard operating procedures for violations and summons, (2) recordkeeping systems used to track code cases, (3) code court processes, and (4) penalties for violations and noncompliance. In addition, the team has outlined the primary issues in each of the study municipalities related to enforcing the Uniform Code. Sections IX-XII provide a discussion of the investigation’s findings in each municipality. Over the course of the

investigation, the investigative team was able to identify several obstacles the municipalities collectively face in their efforts to adequately administer and enforce the Uniform Code; an analysis of the recurrent and common issues is provided in Section XIII.

IX. CITY OF ALBANY

The City of Albany, New York’s state capital, is situated in Albany County and has a mayoral-council form of government. The City’s estimated population of 97,280 people is spread over 21.39 square miles, with a median household income of \$43,790.¹⁰⁴ There are 29,757 properties under the jurisdiction of the City of Albany Department of Buildings and Regulatory Compliance; 1,164 are vacant properties, 21,130 are residential properties, and 3,681 are business and commercial properties.¹⁰⁵

The City of Albany empowers the Commissioner of the Department of Buildings and Regulatory Compliance with the authority and responsibility of enforcing “all laws and ordinances relative to the erection, construction, alteration or removal of buildings or other structures” and the provisions of the Uniform Code.¹⁰⁶ Additionally, the Building Commissioner’s responsibility of enforcing the Uniform Code within the City of Albany is codified in § 133-44 of the Albany City Code.¹⁰⁷ If a conflict arises between the provisions of the

¹⁰⁴ *Quick Facts Albany City, New York*, UNITED STATES CENSUS BUREAU.

¹⁰⁵ Response from Robert G. Magee to New York State Senate Committee on Investigations & Government Operations (Feb. 20, 2019) (hereinafter “Response from Robert G. Magee to NYS Senate IGO Committee”) (on file with author).

¹⁰⁶ ALBANY, NY., CODE §§ 20-2, 20-3 (2019).

¹⁰⁷ ALBANY, NY., CODE § 133-44 (2018).

Uniform Code and any other provisions of the City’s building code, the more stringent requirement prevails.¹⁰⁸

The Department of Buildings and Regulatory Compliance (hereinafter “Albany Buildings Department”) employs eight full-time code enforcement officers who enforce the Uniform Code for existing structures and five full-time building inspectors who enforce the Uniform Code with respect to new structures and structures that are being renovated or repaired.¹⁰⁹ Since January 1, 2017, the Albany Building Department has completed 19,276 inspections, resulting in 5,298 summonses and code violations. Of those 5,298 summonses and violations, 3,480 were resolved, while 1,818 remain open.¹¹⁰

IX.A. STANDARD PROCEDURES FOR INSPECTIONS & VIOLATIONS

The Albany Buildings Department is required to investigate all complaints of code violations made in good faith to the Department.¹¹¹ It also inspects all rental dwellings every two and a half years through the City’s residential occupancy permit program. The Albany Buildings Department uses third parties to perform annual inspections of places of public assembly with an occupancy of more than 50 people as well as required inspections of sprinkler systems and elevators, although the Albany Buildings Department performs inspections of any buildings under its jurisdiction upon receipt of a complaint of a violation.

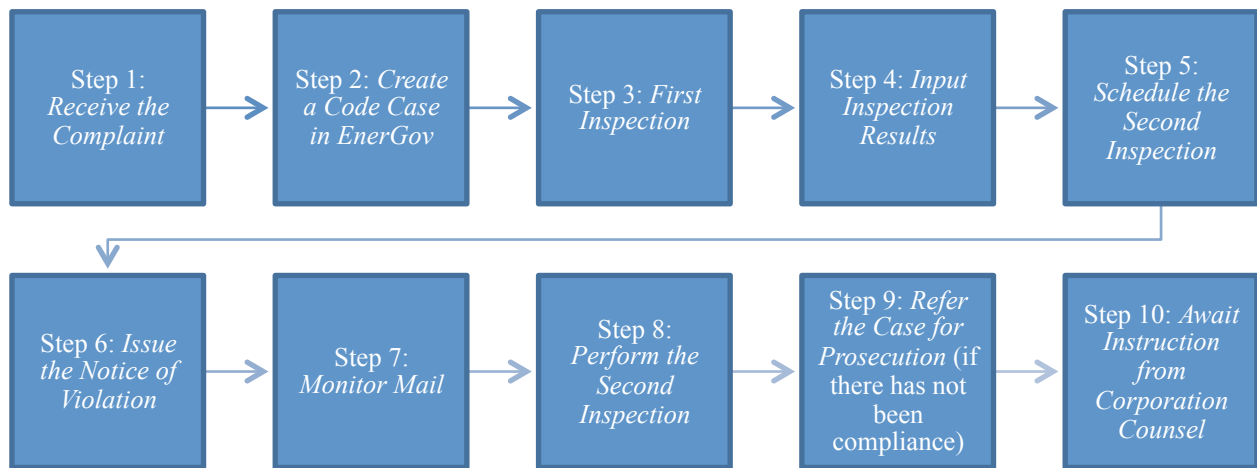
¹⁰⁸ *Id.*

¹⁰⁹ Response from Robert G. Magee to NYS Senate IGO Committee, *supra* note 105.

¹¹⁰ *Id.*

¹¹¹ ALBANY, NY., CODE § 133-37 (2018).

The Albany Buildings Department provides its code officers with a roadmap for its code complaint protocol. The standard operating procedure for the protocol provides step-by-step information for when the Albany Buildings Department receives a complaint.¹¹² The figure below illustrates the protocol followed by code enforcement officials in Albany.



Whenever the Albany Buildings Department receives a complaint about alleged code violations, the first step is to evaluate whether the allegations amount to a code violation. If the issued violation is a problem outside their jurisdiction, the Albany Buildings Department is obligated to inform the complainant they are unable to assist them, but can refer them to the appropriate department or governmental entity. If a complaint is within the jurisdiction of the Albany Buildings Department, a code enforcement officer will perform an inspection. If, upon first inspection, there is a violation(s), the code enforcement officer assigned to the case is responsible for sending the owner of the property the notice of violation—with a re-inspection

¹¹² Response from Robert G. Magee to NYS Senate IGO Committee, *supra* note 105.

date included—by regular mail and certified mail.¹¹³ At the second inspection date, the code officer returns to the property to verify whether the violation(s) has been corrected. When a notice of violation has been sent and the property is still out of compliance by the second inspection, the case is referred for prosecution within one week of the second inspection, except where the code officer has reason to believe that compliance is imminent and that referring the case for prosecution would be counter-productive. While corporation counsel is responsible for the prosecution of the case, the code officer assigned to the case remains responsible for assisting corporation counsel in providing testimony, additional documentation or performing additional court-related inspections.

1. UNSAFE & UNFIT ORDER PROCEDURES

According to the Albany Buildings Department, a building is unsafe for human habitation when, based on the judgment of the code officer, the property cannot be occupied without risking serious injury to the inhabitants of the building. Per standard operating procedures, a building is unsafe for human habitation in the following circumstances: (1) lack of heat, (2) lack of electricity, (3) structural instability, (4) extraordinary accumulation of rubbish or garbage, (5) extraordinary infestation or profusion of mold, (6) lack of fire suppression or detection systems, (7) compromised electrical systems, (8) blocked or removed means of egress, and (9) a building's proximity to another unsafe structure or condition.¹¹⁴

If it is determined that a building is unfit for human habitation, the Commissioner of the Buildings Department is required to give notice of the violation to the party responsible and include a statement of intent to order the premises to be vacated if compliance with the

¹¹³ Response from Robert G. Magee to NYS Senate IGO Committee, *supra* note 105.

¹¹⁴ *Id.*

provisions of the notice of violation has not been secured.¹¹⁵ If an order has not been complied with, the Commissioner may post a notice on the premises and order the premises vacated.¹¹⁶

2. RESIDENTIAL OCCUPANCY PERMITS & RENTAL DWELLING REGISTRY

Pursuant to Albany City Code § 231, all residential rental dwelling units must be inspected and certified by the Albany Buildings Department before issuing a residential occupancy permit (“ROP”).¹¹⁷ Once issued, ROPs are valid for 30 months.¹¹⁸ When inspecting a rental dwelling prior to issuing an ROP, code officers inspect for the following items at each unit: (1) smoke and carbon monoxide detectors, (2) open means of egress, (3) general cleanliness, (4) security, (5) building structure, (6) electricity, and (7) running, clean, and hot water.¹¹⁹ If a rental property does not comply, upon inspection, with the Uniform Code, the Albany Buildings Department issues a notice of violation to the property owner.¹²⁰ Violations found during inspections of rental properties also follow the same protocol that applies to standard code enforcement cases.

The Albany Buildings Department is also obligated to maintain and enforce the City of Albany’s Rental Dwelling Registry. Pursuant to § 231 of the City of Albany Code, all rental dwellings must be registered with the City of Albany by the owner and must be reregistered as a certified rental dwelling prior to the expiration of the residential occupancy permit.¹²¹

The purpose of the Rental Dwelling Registry is “to protect health, safety and welfare of residents [and] to protect a diverse housing stock from deterioration[.]”¹²² Furthermore, the

¹¹⁵ ALBANY, NY., CODE § 231-115 (1996).

¹¹⁶ ALBANY, NY., CODE § 231-116 (1996).

¹¹⁷ ALBANY, NY., CODE § 231-130 (1996).

¹¹⁸ *Id.*

¹¹⁹ Response from Robert G. Magee to NYS Senate IGO Committee, *supra* note 105.

¹²⁰ *Id.*

¹²¹ ALBANY, NY., CODE § 231-139-40 (1996).

¹²² ALBANY, NY., CODE § 231-136(A) (1996).

Rental Dwelling Registry is intended to “ensure the protection of persons and property in all existing residential rental structures [...] and ensure that rental property owners and prospective rental property owners are informed of, and adhere to, code provisions governing the use and maintenance of rental properties[.]”¹²³

Crucially, § 231 of the City of Albany Code requires that when registering a rental unit, the application must provide the name, legal residence address and telephone number of the owner and any agent in control of the rental unit.¹²⁴ Furthermore, if the owner or agent is not a natural person—such as an LLC—then the president, general manager or other chief executive officer of the organization must be listed as the owner information.¹²⁵

3. VACANT BUILDING REGISTRATION

Pursuant to § 133-78 of the City of Albany Code, the owner of any vacant building must register with the Albany Buildings Department and renew registration annually thereafter until the building is no longer vacant.¹²⁶ The owner of a vacant building is also required to pay an annual fee for the period the building remains vacant.¹²⁷ The fee schedule for vacant residential buildings varies based on how many units the building has and the number of years the building has been vacant for. For example, a residential building with one to three units begins at \$250 for the first year, eventually increasing to \$1,000 after the third year, whereas a residential building of seven or more units begins at \$1,000 for the first year, eventually increasing to \$4,000 after the third year.¹²⁸

¹²³ ALBANY, NY., CODE § 231-136(B) (1996).

¹²⁴ ALBANY, NY., CODE § 231-143 (1996).

¹²⁵ *Id.*

¹²⁶ ALBANY, NY., CODE § 133-78 (2019).

¹²⁷ *Id.*

¹²⁸ ALBANY, NY., CODE § 133-78.3 (2019).

Notably, in 2018, the Department of Buildings & Regulatory Compliance implemented the BuildingBlocks software platform to enable the Department to identify at-risk buildings before they become vacant.¹²⁹

IX.B. RECORDKEEPING SYSTEM

The City of Albany Buildings Department began using “Energov” for their code enforcement recordkeeping in early January 2017. According to the City of Albany’s response to the investigative team, the 19,276 inspections reported to have been completed do not reflect the true, greater number of inspections actually completed, due to the transition to the new system in late January 2017 for code enforcement officers and in October 2017 for building inspectors.¹³⁰ Moreover, the total number of reported inspections is low because code officials often fail to update the case information.¹³¹

IX.C. CODE COURT PROCESSES

The Albany City Court – Civil Part has primary jurisdiction to adjudicate code violations.¹³² The Albany County District Attorney is responsible for prosecuting code enforcement cases; however, he has delegated prosecution authority to the City of Albany Department of Law.¹³³ Pursuant to Albany City Code §133-30, Corporation Counsel is responsible for prosecuting and collecting all penalties for violations of the Uniform Code and

¹²⁹ 2019 Proposed Budget, CITY OF ALBANY 69.

¹³⁰ Response from Robert G. Magee to NYS Senate IGO Committee, *supra* note 105.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

City of Albany building and housing code violations.¹³⁴ The Albany City Court adjudicates code violations once a week.

IX.D. PENALTIES FOR VIOLATIONS & NONCOMPLIANCE

Albany City Code mandates that a violation of the Uniform Code qualifies as a violation of its Building and Housing Codes; therefore the penalties for such violations may also apply for violations of the Uniform Code.¹³⁵

Building Code. If a person is convicted of failing to comply with any provisions of the Albany Building Code, they are subject to a fine of not more than \$1,000 per day of violation or imprisonment not exceeding one year, or both.¹³⁶ Each day of violation constitutes a separate offense and any fines levied constitute civil forfeitures to the City of Albany.¹³⁷

Housing Code. Any person convicted of a violation of Part 3 or Part 4 of the Housing Code of the City of Albany, and thus the Uniform Code, is subject to the following schedule:

- “First offense: a fine of not less than \$250 nor more than \$400 per day the violation remains unabated or five days' imprisonment, or 50 hours of community service, or any combination thereof.”¹³⁸
- “Second offense for the same violation regarding the same person and property committed within three years after the first offense: a fine of not less than \$500

¹³⁴ALBANY, NY., CODE § 133-30 (2019).

¹³⁵ALBANY, NY., CODE §§ 133-26, 231-103.1 (2019).

¹³⁶ALBANY, NY., CODE § 133A-3(A) (2019). A person includes “the owner, occupant, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation directly or indirectly in control of the building or part thereof.” *Id.*

¹³⁷*Id.*

¹³⁸ALBANY, NY., CODE § 133A-3(B) (2019).

nor more than \$800 per day the violation remains unabated, or 10 days' imprisonment or 100 hours of community service, or any combination thereof.”¹³⁹

- “Third offense for the same violation regarding the same person and property committed within three years after the first offense: a fine of not less than \$1,000 nor more than \$1,600 per day the violation remains unabated, or 15 days' imprisonment, or 150 hours of community service, or any combination thereof.”¹⁴⁰

Any person convicted of a violation of Part 5, Rental Dwelling Registry, of the Housing Code is subject to a fine of minimum of \$250 and maximum of \$1,600.¹⁴¹ Such violations include an owner failing to register or reregister a rental property or otherwise comply with the registration of rental dwellings requirements outlined in §§ 231-139 through 231-146 of the Albany City Code.

In both the Building Code and Housing Code of the City of Albany, any unpaid fine is subject to the placement and recordation of a lien by the City of Albany.¹⁴²

Over the past six months, the average court fine reached through settlement is about \$300, and the average trial judgment is \$10,000.¹⁴³

¹³⁹ ALBANY, NY., CODE § 133A-3(B) (2019).

¹⁴⁰ ALBANY, NY., CODE § 133A-3(B) (2019).

¹⁴¹ ALBANY, NY., CODE § 133A-3(B) (2019).

¹⁴² *Id.*

¹⁴³ Email from Robert Magee, Assistant Corporation Counsel, to Sara DiBernardo, Counsel, Sen. Skoufis (Feb. 11, 2019) (on file with author).

X. CITY OF NEWBURGH

The City of Newburgh is located in Orange County, and has a managerial form of government. The City's population of 28,164 people is spread over 3.8 square miles.¹⁴⁴ There are 6,502 properties within the jurisdiction of the City of Newburgh; 751 are vacant land or structures, 4,487 are residential properties, and 1,087 are business and commercial properties.¹⁴⁵

The Code Compliance Supervisor, appointed by the City Manager, is responsible for enforcing the Construction and Housing Codes of the City of Newburgh as well as the Uniform Code.¹⁴⁶ Section 122-4 requires the Code Compliance Supervisor to “administer and enforce all the provisions of laws, ordinances and regulations applicable to the construction, alteration, repair, removal or demolition of buildings and structures.” Therefore, the Code Compliance Supervisor is required to enforce both the City's specific housing and building codes and the Uniform Code. If other City Codes apply a stricter standard than the Uniform code, the stricter provision governs.¹⁴⁷

The City of Newburgh's Department of Code Compliance (“Newburgh Code Department”) employs four full time building inspectors who enforce the City's Construction and Housing Codes as well as the Uniform Code.¹⁴⁸ Since January 1, 2017, the Newburgh Code

¹⁴⁴ *Quick Facts Newburgh city, New York*, UNITED STATE CENSUS BUREAU.

¹⁴⁵ Letter from Joseph P. Donat, Interim City Manager, to Investigations and Government Operations Committee (Mar. 11, 2019) (hereinafter “Response from Joseph P. Donat to NYS Senate IGO Committee (Mar. 11, 2019)”) (on file with author).

¹⁴⁶ NEWBURGH, NY., CODE § 122-3 (2019).

¹⁴⁷ NEWBURGH, NY., CODE § 122-1 (2019).

¹⁴⁸ Response from Joseph P. Donat to NYS Senate IGO Committee (Mar. 11, 2019), *supra* note 145.

Department has completed 5,948 inspections, resulting in 8,615 summons and code violations.¹⁴⁹ Of those total violations, approximately 125 cases resulted in default judgments.¹⁵⁰

X.A. STANDARD PROCEDURES FOR INSPECTIONS & VIOLATIONS

The Newburgh Code Department, as a general policy, investigates every complaint that the Department receives.¹⁵¹ The Newburgh Code Department provides contact information for complaints about property conditions and vacant properties directly on its website. Despite multiple requests for the provision of policies and procedures, the Newburgh Code Department failed to provide the investigative team with the standard operating procedures of the Department for inspections and violations. The following information was gathered by the investigative team from the City of Newburgh Code.

The Newburgh Code Department requires that all work subject to a building permit must be kept open and accessible to inspection.¹⁵² Before issuing a certificate of occupancy for any building subject to a building permit, the Newburgh Code Department must inspect the premises.¹⁵³

Where a violation has been determined, the Code Compliance Supervisor is required to give notice of such violation to the responsible party.¹⁵⁴ The notice must be served upon the owner, agent, operator or occupant, must specify the alleged violation, and must provide a

¹⁴⁹ For the period of Jan. 1, 2017 to Feb. 28, 2019. *Id.*

¹⁵⁰ Letter from Joseph P. Donat, Interim City Manager, to Investigations and Government Operations Committee (Apr. 4, 2019) (hereinafter “Response from Joseph P. Donat to NYS Senate IGO Committee (Apr. 4, 2019)”) (on file with author).

¹⁵¹ Email from Jeremy Kaufman, Assistant Corporation Counsel to Sara DiBernardo, Esq., Counsel (Mar. 14, 2019) (on file with author).

¹⁵² NEWBURGH, NY., CODE § 122-15 (2019).

¹⁵³ NEWBURGH, NY., CODE § 122-23 (2019).

¹⁵⁴ NEWBURGH, NY., CODE § 122-7 (2019).

reasonable time for compliance.¹⁵⁵ Additionally, the Code Compliance Supervisor is required to order, in writing, the remedying of all conditions found in violation of the City Building, Construction, and Housing codes, including the provisions of the Uniform Code.¹⁵⁶

1. UNSAFE & UNFIT PROCEDURES

The City of Newburgh Code defines buildings as “unsafe” which are “structurally unsafe, insanitary or not provided with adequate egress or which constitute a fire hazard or are otherwise dangerous to human life or which, in relation to existing use, constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment.”¹⁵⁷ An inspection is required of every building reported as unsafe or damaged.¹⁵⁸ If a building is determined to be “unsafe,” the Newburgh Code Department is required to proceed with ordering the removal or repairs of the unsafe building or issuing an order to vacate the building.¹⁵⁹

If a building inspector determines that there is an actual and immediate danger of failure or collapse, the inspector is permitted to order the building to be vacated and not reoccupied until the necessary repairs and improvements are completed, inspected, and approved.¹⁶⁰

2. RENTAL REGISTRY

The City of Newburgh maintains a Rental Registry, which requires owners of a rental property to submit a rental license application with the Newburgh Code Department or authorized official.¹⁶¹ The City of Newburgh established the Rental Registry as a way to ensure compliance with applicable building and housing laws, rules, and regulations.¹⁶²

¹⁵⁵ *Id.*

¹⁵⁶ NEWBURGH, NY., CODE § 122-4 (2019).

¹⁵⁷ NEWBURGH, NY., CODE § 129-1 (2019).

¹⁵⁸ NEWBURGH, NY., CODE § 129-2 (2019).

¹⁵⁹ NEWBURGH, NY., CODE § 129-3 (2019).

¹⁶⁰ NEWBURGH, NY., CODE § 129-4 (2019).

¹⁶¹ NEWBURGH, NY., CODE § 240-3 (2019).

¹⁶² NEWBURGH, NY., CODE § 240-1 (2019).

The rental license application requires the name of the individual(s) or business name(s) and contact information for the owner of the rental property.¹⁶³ Additionally, the application must include the name and contact information for an individual designated by the owner as the authorized agent for receiving notices of code violations and process in any court or administrative enforcement proceeding on behalf of such owner in connection with the enforcement of any applicable code.¹⁶⁴

Prior to issuing a rental license, an inspector must determine that the property is in compliance with the Codes of the City of Newburgh, the Uniform Code, the Property Maintenance Code, and any other applicable fire prevention code.¹⁶⁵ It is unlawful for an owner to rent any property or unit or allow any unit to be occupied without having first received a rental license. The fee for a rental license application and permit is dependent upon the number of rental dwelling units per structure.¹⁶⁶ An individual who fails to comply with the rental property requirements set forth in Chapter 240 of the Newburgh City Code may be punished with a fine up to \$500, thirty days in jail, or both.¹⁶⁷

3. VACANT BUILDINGS REGISTRATION

The City of Newburgh requires the owner of any vacant property to file a registration statement with the Newburgh Code Department, along with any applicable fee.¹⁶⁸ The owner of the property is required to renew the registration and pay a fee annually for the period the building remains vacant.¹⁶⁹ The fee schedule for vacant buildings varies for the number of years

¹⁶³NEWBURGH, NY., CODE § 240-4 (2019).

¹⁶⁴*Id.*

¹⁶⁵NEWBURGH, NY., CODE § 240-3 (2019).

¹⁶⁶NEWBURGH, NY., CODE § 163-1 (2019).

¹⁶⁷NEWBURGH, NY., CODE § 240-15 (2019).

¹⁶⁸NEWBURGH, NY., CODE § 121-3 (2019).

¹⁶⁹*Id.*

the building has remained vacant; the initial registration fee is \$250, the first renewal is \$500, the second renewal is \$1,000, and any subsequent renewal is fixed at \$2,000.¹⁷⁰

A party that violates any provision related to the vacant buildings requirements is subject to a minimum of \$500 and a maximum \$1,000 fine for each offense.¹⁷¹ Every day that a violation continues constitutes a separate and distinct offense. Fines assessed are recoverable from the owner and shall be a lien on the property.¹⁷²

X.B. RECORDKEEPING SYSTEM

The Newburgh Code Department uses Integrated Property System (IPS) and BuildingBlocks to track code enforcement cases. In an attempt to analyze histories of violations and the primary issues with code enforcement in Newburgh, the investigative team requested aggregated data from the City of Newburgh. In its response, the City of Newburgh informed the investigative team that the software has limited capabilities, and cannot accurately capture, aggregate and export information.¹⁷³

To assist in the investigation, the Newburgh Code Department granted the investigative team access to their BuildingBlocks software to understand the difficulties the Department and its officials encounter in enforcing housing and building code.

¹⁷⁰NEWBURGH, NY., CODE § 163-1 (2019).

¹⁷¹NEWBURGH, NY., CODE § 121-5 (2019).

¹⁷²*Id.*

¹⁷³ Response from Joseph P. Donat to NYS Senate IGO Committee (Apr. 4, 2019), *supra* note 150.

X.C. CODE COURT PROCESS

The Newburgh City Court has primary jurisdiction to adjudicate code enforcement cases.¹⁷⁴ Occasionally, the Orange County Supreme Court has the authority to exercise jurisdiction over certain cases, superseding the City Court.¹⁷⁵ The Orange County District Attorney has the responsibility of prosecuting code enforcement cases; however, he has delegated prosecution authority to the City of Newburgh Office of Corporation Counsel.¹⁷⁶ The Newburgh City Court adjudicates housing and building violations twice a week.¹⁷⁷

X.D. PENALTIES FOR VIOLATIONS & NONCOMPLIANCE

Section 122-8 of the Newburgh City Code prescribes that any party that violates or fails to comply with any provision of the Uniform Code is subject to penalties prescribed in § 382 of the Executive Law of New York.¹⁷⁸ If a party violates the provisions of the Newburgh City Building, Construction or Housing Codes, they are subject to the penalties provided in § 1-12 of the City Code. Section 1-12, provides the violation of any such provision of the City Code or any ordinance or local law shall be prosecuted and punished by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days or both. Each day any violation shall continue constitutes a separate offense.¹⁷⁹

¹⁷⁴ Response from Joseph P. Donat to NYS Senate IGO Committee (Mar. 11, 2019), *supra* note 145.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *To Examine House Code Enforcement across New York State can be Enhanced or Assisted: Joint Hearing Before the S. Comm. on Investigations and Gov. Operations and Housing, Construction, and Community Development*, 2019-2020 Leg. Sess. 26 (May 23, 2019) (statement of Robert Magee, Corporation Counsel, City of Albany) (hereinafter “*Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*”).

¹⁷⁸ NEWBURGH, NY., CODE § 122-8 (2019).

¹⁷⁹ NEWBURGH, NY., CODE § 1-12 (2019).

Importantly, the responsibility for violations of the City Housing and Building Codes extends to owners, agents, operators, and occupants of premises determined to be in violation.¹⁸⁰

Additionally, the failure to apply for a building permit prior to the commencement of work is punishable by either 50 percent of the application fee for a residential structure or \$200 for a commercial structure.¹⁸¹

XI. CITY OF MOUNT VERNON

The City of Mount Vernon is located in Westchester County, and has a mayoral-council form of government. The City's population of 67,593 is spread over 4.39 square miles.¹⁸² There are 11,200 properties within the jurisdiction of the Mount Vernon Department of Buildings; approximately 788 are vacant properties, 8,225 are residential properties, and 1,495 are business or commercial properties.¹⁸³

The Mount Vernon Buildings Department and its Commissioner are responsible for administering and enforcing the Housing and Building Codes of the City of Mount Vernon as well as the Uniform Code. The Commissioner, officers of the Bureau of Fire Prevention, firefighters, and other duly authorized agents, are authorized to issue appearance tickets for all violations of the Uniform Code.¹⁸⁴ In the Mount Vernon City Code, Chapter 106 provides provisions for unsafe buildings, Chapter 131 provides for fire prevention, including the

¹⁸⁰NEWBURGH, NY., CODE § 122-7 (2019).

¹⁸¹NEWBURGH, NY., CODE § 163-1 (2019).

¹⁸²*Quick Facts Mount Vernon City, New York*, UNITED STATE CENSUS BUREAU.

¹⁸³ Response from Mount Vernon Department of Buildings to Senate Investigations and Government Operations Committee (Apr. 25, 2019) (hereinafter "Response from Mount Vernon to NYS Senate IGO Committee") (on file with author).

¹⁸⁴MOUNT VERNON, NY., CODE §§ 7-9, 131-9 (2019).

applicability of the Uniform Code, and Chapter 149 provides the Housing Code for residential premises.

While the Mount Vernon Buildings Department employs on average three to four inspectors a year, as of the conclusion of this investigation, the Department only employed one full time building inspector.¹⁸⁵ Since January 1, 2017, the Mount Vernon Department of Buildings has issued 850 violations and 110 summonses.¹⁸⁶ Of those violations, Mount Vernon informed the investigative team, 91 resulted in a dismissal, 1 resulted in a hold dismissal, and 12 were superseded to other violations; the results of the remaining violations were not provided.¹⁸⁷

XI.A. STANDARDS PROCEDURES FOR INSPECTIONS & VIOLATIONS

Despite multiple requests for the submission of policies and procedures, the Mount Vernon Department of Buildings failed to provide the investigative team with the standard operating procedures of the Department for inspections and violations. The following information was gathered by the investigative team from the City of Mount Vernon Code.

1. UNSAFE & UNFIT PROCEDURES

Pursuant to Mount Vernon City Code, a building or structure is “unsafe” if it exhibits certain defects which are dangerous to the “life, safety, or morals or the general health and welfare of the occupant or of the people of the City of Mount Vernon.”¹⁸⁸ If a building or structure is “unsafe,” the Commissioner must adhere to the following standards in ordering repair, vacation or demolition:

¹⁸⁵ Response from Mount Vernon to NYS Senate IGO Committee, *supra* note 183.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ MOUNT VERNON, NY., CODE § 106-1 (2019).

- Ordered repaired, if the building can be reasonably repaired so that it will not exist in violation of the applicable code or laws;¹⁸⁹
- Ordered vacated, if the building is in such a condition as to make it dangerous to health, morals, safety or general welfare of its occupants;¹⁹⁰
- Ordered demolished, if the building is 50 percent damaged, decayed or deteriorated from its original value or structure or if it cannot be repaired, or in all cases where a building is a fire hazard, existing or erected in violation of any ordinance of the City.¹⁹¹

Notice of the determination that a building is unsafe must be served upon the owner containing a description of the premises, a statement of the particulars explaining why the building is unsafe, and an order of the Commissioner requiring the building “to be changed, altered, repaired, vacated or demolished within 30 days.”¹⁹² Corporation Counsel of the City of Mount Vernon is responsible for prosecuting any parties that fail to comply with the terms of the notices and orders for unsafe buildings.¹⁹³

2. RENTAL DWELLING UNITS

Pursuant to § 149-42 of the Mount Vernon Housing Code, a dwelling unit must be inspected and certified to be free of any violations by the Department of Buildings prior to being rented or reoccupied. The owner or operator of a vacant unit is required to request an inspection within two days after the unit offered for rent becomes vacant.¹⁹⁴ The Department’s stated

¹⁸⁹MOUNT VERNON, NY., CODE § 106-2 (2019).

¹⁹⁰*Id.*

¹⁹¹*Id.*

¹⁹²MOUNT VERNON, NY., CODE § 106-4 (2019).

¹⁹³MOUNT VERNON, NY., CODE § 106-6 (2019).

¹⁹⁴MOUNT VERNON, NY., CODE § 149-42 (2019).

justification of the vacancy inspection policy is to ensure “that all rental units meet City and State property maintenance codes as well as to avoid the rental of illegal units.”¹⁹⁵

3. VACANT BUILDINGS

Unlike other municipalities, the City of Mount Vernon does not have extensive codified provisions to address abandoned and vacant buildings in its jurisdiction. If a vacant building is determined to be “unsafe,” the Commissioner of Buildings may order the occupants to vacate.¹⁹⁶

XI.B. RECORDKEEPING SYSTEM

The Mount Vernon Department of Buildings uses Municipity 5, Daily Work Manager, and BuildingBlocks to track code cases.¹⁹⁷ To assist in the investigation, the Department granted the investigative team access to their BuildingBlocks software to understand the difficulties the Department and its officials encounter in enforcing housing and building code.

XI.C. CODE COURT PROCESS

The City of Mount Vernon City Court has primary jurisdiction over code violation cases.¹⁹⁸ The Westchester County District Attorney has original jurisdiction over prosecution of code enforcement cases; however, he has delegated prosecution authority to the City of Mount Vernon Legal Department.¹⁹⁹ Specifically, Corporation Counsel is responsible for prosecuting all

¹⁹⁵ *City of Mount Vernon, Buildings*, FAQ, CITY OF MOUNT VERNON (last visited June 11, 2019).

¹⁹⁶ MOUNT VERNON, NY., CODE § 106-11 (2019).

¹⁹⁷ Response from Mount Vernon to NYS Senate IGO Committee, *supra* note 183.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

parties that fail to comply with the Mount Vernon Building and Housing Codes.²⁰⁰ The Mount Vernon City Court adjudicates housing and building violations twice a week.²⁰¹

XI.D. PENALTIES FOR VIOLATIONS & NONCOMPLIANCE

Generally, a party who violates any provision of the Mount Vernon Code is subject to a fine not exceeding \$250 or by imprisonment not exceeding 15 days, or both.²⁰² A corporation is subject to a fine not exceeding \$500, which may be recovered in a civil action.²⁰³ For violations of the Mount Vernon Housing Codes, any party—owner, agent, contractor, builder, or occupant—who violates or assists in the violation of the Housing Code, is liable to a fine not exceeding \$500 or imprisonment not exceeding 15 days, or both, for each and every day in which the violation continues.²⁰⁴ For violations within the scope of the Bureau of Fire Prevention, including provisions of the Uniform Code, a party’s first offense may result in a warning; the second offense results in the basic charge being tripled; the third offense results in the license being suspended for six months and a fee of \$500.²⁰⁵

²⁰⁰MOUNT VERNON, NY., CODE § 106-6 (2019).

²⁰¹*Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Robert Magee, Corporation Counsel, City of Albany), *supra* note 177 at 51.

²⁰²MOUNT VERNON, NY., CODE § 1-4 (2019).

²⁰³*Id.*

²⁰⁴MOUNT VERNON, NY., CODE § 149-62 (2019).

²⁰⁵MOUNT VERNON, NY., CODE § 131-9 (2019).

XII. TOWN OF RAMAPO

The Town of Ramapo is located in Rockland County, and is governed by a town supervisor. Ramapo’s population of 136,848 is spread over 61.2 square miles, with a median household income of \$69,245.²⁰⁶ The Town of Ramapo’s Building Department is responsible for enforcing housing and building codes in the unincorporated areas of the Town; the 12 villages within the Town’s boundaries are responsible for enforcing their individual codes. There are 30,491 properties within the jurisdiction of the Town of Ramapo’s Building Department; 2,107 are vacant, 20,888 are residential, and 2,979 are business and commercial.²⁰⁷

The Town of Ramapo empowers the Building Department and the Bureau of Fire Prevention with the authority and responsibility of enforcing the Uniform Code, incorporated in both the Building Construction and Fire Prevention Codes.²⁰⁸

The Ramapo Building Department employs eight full time code enforcement officials and one part time code enforcement official.²⁰⁹ Since January 1, 2017, the Building Department has completed 7,882 inspections, resulting in 1,993 code violations.²¹⁰

XII.A. STANDARD PROCEDURES FOR VIOLATIONS & SUMMONS

The Ramapo Building Department did not provide the investigative team with specific procedures and policies related to code enforcement, but indicated that its current practices

²⁰⁶ *Quick Facts Ramapo Town, New York*, UNITED STATE CENSUS BUREAU.

²⁰⁷ Response from Dennis Lynch, Assistant Town Attorney, to NYS Senate Investigations and Government Operations Committee (Mar. 15, 2019) (hereinafter “Response from Dennis Lynch to NYS Senate IGO Committee”) (on file with author).

²⁰⁸ RAMAPO, NY., CODE §§ 144-5, 376-141 (2019).

²⁰⁹ Response from Dennis Lynch to NYS Senate IGO Committee, *supra* note 207.

²¹⁰ *Id.*

regarding (1) the review and issuance of building permits, (2) construction inspections, and (3) issuance, suspension and revocation of certificates of occupancy, are performed pursuant to provisions of Title 19 NYCRR Part 1203.3.²¹¹

Ramapo's response to the investigative team's information request included the Town's response to the Department of State regarding its "updated work plan."²¹² In this response, the Town informed the Department of State of its newly adopted procedures for compliance with the Uniform Code. With respect to ensuring the accuracy of inspections, the Building Department developed "check lists" that relate to inspections required pursuant to the Uniform Code.²¹³ Each month, the Building Inspector is responsible for reviewing a list of all inspections in the previous month.²¹⁴ The Building Inspector and the Fire Inspector, jointly, and on a monthly basis, are required to conduct five random inspections of properties that were previously inspected by the Building Department staff in the past month to determine whether the initial inspections were complete and accurate.²¹⁵ The investigative team was provided with the Building Department's "commercial occupancies review checklist," which is used for inspections of the commercial building construction process, as required by the Uniform Code.²¹⁶

Despite multiple requests, the Town did not provide specific policies and procedures related to the Town's code enforcement activities. The investigative team collected the following information regarding code enforcement procedures from the Town of Ramapo Code and documents provided by the Department of State.

²¹¹ *Id.*

²¹² *Id.*

²¹³ Response from Dennis Lynch to NYS Senate IGO Committee, *supra* note 207.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

1. UNSAFE & UNFIT PROCEDURES

The Building Inspector of the Town of Ramapo is responsible for enforcing the provisions of the code related to unsafe buildings.²¹⁷ If the Building Inspector determines that any structure is unsafe or dangerous to the public, he or she must require a licensed architect or professional engineer to further examine the property.²¹⁸ If the additional examination concurs with the original determination, the Building Inspector must give prompt notice of the condition to the owner or occupants ordering the repair, removal, securing or demolition of the structure.²¹⁹ An order to comply must be completed within 30 days after service, but may be extended if good cause is shown.²²⁰ If a building presents an actual or immediate danger of failure or collapse or if its use or occupancy endangers life or limb, the Building Inspector must order it vacated.²²¹ Failure to comply with an order results in a fine of not more \$1,000 per week for each week of violation or a sentence of not more than one year of imprisonment, or both.²²² Each week a violation exists constitutes a separate and distinct violation, punishable by a fine not to exceed \$250 for each week of violation or a sentence of imprisonment not to exceed 15 days, or both.²²³

2. PROPERTY OWNERSHIP REGISTRATION

While the Town Code does not include provisions specific to rental dwellings, Chapter 207 sets forth requirements for property owners who reside outside the jurisdiction of the Town of Ramapo, capturing rental dwellings. Properties owned by persons who reside or have a principal place of business outside the Town of Ramapo are required to register with the Building Department an individual authorized to act on behalf of the owner in matters

²¹⁷RAMAPO, NY., CODE § 112-2 (2019).

²¹⁸*Id.*

²¹⁹*Id.*

²²⁰RAMAPO, NY., CODE § 122-3(b) (2019).

²²¹RAMAPO, NY., CODE § 112-7 (2019).

²²²RAMAPO, NY., CODE § 1-17 (2019).

²²³RAMAPO, NY., CODE § 1-17 (2019).

concerning the management and operation of the property including, but not limited to, the acceptance of service of notices and process.²²⁴ The designated individual must reside in Rockland County. The designation authorizes the individual to bind the owner to any settlement, fine, judgment or other disposition, excluding incarceration, which may result from any civil or criminal proceeding brought by the Town.²²⁵ The Building Inspector has the authority to issue process for violations of this registration requirement.²²⁶ A violation is punishable by a fine not exceeding \$500 for the first offense, \$1,000 for the second offense, and \$2,000 for the third and subsequent offense.²²⁷

3. VACANT BUILDINGS

Unlike other municipalities, the Town of Ramapo Code does not incorporate specific provisions with respect to addressing vacant and abandoned buildings within its jurisdiction. The only provision specific to vacant buildings is § 144-21, which requires an owner or manager of a vacant building to remove all combustible waste and refuse, secure all openings to prohibit entry, and maintain all required fire-detection and suppression systems in service.²²⁸

XII.B. RECORDKEEPING SYSTEM

The Ramapo Building Department uses “Municipity5” and “Municipity Mobile” for tracking code enforcement cases.²²⁹ Ramapo informed the investigative team it is currently exploring other recordkeeping systems that will allow them to track open cases more efficiently.

²²⁴ RAMAPO, NY., CODE § 207-4 (2019).

²²⁵ *Id.*

²²⁶ RAMAPO, NY., CODE § 207-5 (2019).

²²⁷ RAMAPO, NY., CODE § 207-7 (2019).

²²⁸ RAMAPO, NY., CODE § 144-21 (2019).

²²⁹ Response from Dennis Lynch to NYS Senate IGO Committee, *supra* note 207.

XII.C. CODE COURT PROCESSES

The Town of Ramapo Justice Court has primary jurisdiction over code violation cases.²³⁰ The Rockland County District Attorney has responsibility of prosecuting code enforcement cases; however, he has delegated prosecution authority to the Town of Ramapo's Town Attorney's Office.²³¹ The Town of Ramapo's court adjudicates code violations once every three weeks.

Code enforcement officials and inspectors are usually required to testify regarding their observations and activities related to specific code enforcement cases. In Ramapo, officials and inspectors were required to attend court, waiting hours to testify regarding a single case. This inefficient use of time was limiting the activities of code officials. After this inefficiency was pointed out, Town representatives agreed that code officials will no longer be required to wait hours to testify, but were permitted to remain in the field until their specific case was called. Engaged code officials, operating in the field, are crucial to proactive code enforcement; the Committees recommend that municipalities across New York efficiently utilize their code enforcement officials' time in court.

XII.D. PENALTIES FOR VIOLATIONS & NONCOMPLIANCE

Any person, corporation, association or partnership that violates or knowingly assists in the violation of any provision of Ramapo's Building Construction Code is liable for a fine of not more than \$5,000 or imprisonment not exceeding 15 days, or both.²³² Any person who violates or knowingly assists in the violation of any provision of Ramapo's Fire Prevention Code is subject

²³⁰ *Id.*

²³¹ *Id.*

²³² RAMAPO, NY., CODE § 1136-1413 (2019).

to a fine of not more than \$5,000 or imprisonment not exceeding 15 days, or both.²³³ If more than one violation exists, a party is subject to the penalties for each violation or noncompliance.²³⁴ Each day a violation or failure to comply continues is a separate offense.²³⁵

XII.E. STATE OVERSIGHT OF TOWN OF RAMAPO

Over the last five years, several Town and Building Department officials in the Town of Ramapo have been investigated, suspended or indicted on charges relating to fraud and corruption. In May of 2016, Fire Inspector Adam Peltz was suspended and demoted for failing to properly inspect four private schools in Ramapo. Inspectors for the State Education Department (SED) found serious violations ignored by Peltz, including inoperable exit doors, electrical panels with no covers, exposed wiring, extension cords in bathrooms, missing electrical device covers, and missing exist signs.²³⁶ Peltz informed SED that he had not received any training on how to perform such inspections. In September of 2016, the Ramapo's Chief Building Inspector, Anthony Mallia, was arrested on a 188-felony charge indictment, including dozens of felony counts of falsifying and tampering with building permits, certificates and other business records.²³⁷ Mallia allegedly undercharged contractors for building permits relating to 33 construction projects in 2015, denying Ramapo taxpayers the full revenue of which they are entitled, approximately \$100,000.²³⁸ Mallia plead guilty to first-degree tampering with public records and official misconduct; he was sentenced to at least five years of probation, but was not

²³³ RAMAPO, NY., CODE § 144-6 (2019).

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Letter from Carl T. Thurnau, Coordinator, State Education Department, to Christopher St. Lawrence, Supervisor, Town of Ramapo (Mar. 14, 2016) (on file with author).

²³⁷ Steve Lieberman, *Ramapo: Building Inspector Anthony Mallia Indicted on 188 Charges*, THE JOURNAL NEWS (Feb. 1, 2017).

²³⁸ *Id.*

required to serve jail time or make restitution. The Village of Spring Valley subsequently hired Mallia as a “consultant.”

Under Mallia’s tenure as the Chief Building Inspector, the Department of State determined the Town of Ramapo was not meeting the minimum standards required for the administration and enforcement of the Uniform Code, ultimately leading to the placement of a State oversight official to monitor the Town’s code related activities.

On November 5, 2013, the Division of Building Standards and Codes (the Division) within the Department of State requested that the Town of Ramapo’s Building Department provide information relating to eight specific properties identified by the Rockland County Illegal Housing Task Force (the Task Force), as being noncompliant with the Uniform Code.²³⁹

Upon consideration of the Town’s response, the Division, on January 28, 2015, notified the former Ramapo Town Supervisor of specific and general deficiencies in the Town’s administration and enforcement of the Uniform Code.²⁴⁰ The deficiencies outlined included the Town’s failure to exercise its code enforcement powers in a due and proper manner so as to extend to the public protection from the hazards of fire and inadequate building construction.²⁴¹

Following a review of the code administration and enforcement practices of the Town, the Division, on April 18, 2016, issued a First Order pursuant to Executive Law § 381(4) compelling the Town to comply with the minimum standards for the administration and enforcement of the Uniform Code.²⁴² The Deputy Secretary of State determined the Town was not complying with the minimum standards related to the issuance of building permits and

²³⁹ Letter from Rossana Rosado, Secretary of State to Michael Specht, Town of Ramapo Supervisor (Dec. 19, 2018) (on file with author).

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² First Order Issued by New York State Department of State to the Town of Ramapo, New York (Apr. 18, 2016) (on file with author).

certificates of occupancy, construction, fire safety and property inspections, identification of unsafe structures and equipment, and maintaining a system of records of code enforcement activities.²⁴³ The First Order also asserted that the Town was not exercising its code administration and enforcement powers in a due and proper manner.²⁴⁴ The First Order, which contains a comprehensive description of the Town of Ramapo Building Department’s failure to comply with the minimum standards of the Uniform Code, is included as Exhibit D.

On December 20, 2016, the Department of State and the Town of Ramapo entered into a Memorandum of Agreement (“the Agreement”) relating to the appointment of an oversight officer to review the Town’s activities relating to the administration and enforcement of the Uniform Code.²⁴⁵

Pursuant to the Agreement, the oversight officer was permitted to: review applications for building permits and operating permits; accompany inspectors on construction, fire safety and property maintenance inspections; review notices of violations, appearance tickets, orders to remedy, and other instruments issued by the Town; observe court proceedings related to code enforcement; and otherwise observe any and all code enforcement activities of the Town.²⁴⁶ Offering technical assistance and advice to the Town related to its code enforcement activities was also permitted.²⁴⁷ Additionally, the oversight officer was required to report all observations of code enforcement activities to the Department of State.²⁴⁸

The oversight officer was not responsible for reviewing specific applications or properties, but assisted in bringing Ramapo’s code enforcement program into compliance with

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.* The Oversight Officer began overseeing the Town’s activities on December 22, 2016.

²⁴⁶ Town of Ramapo, Resolution 2016-597, *Approval of Memorandum Agreement: Oversight Officer – New York State Department of State* (Dec. 20, 2016) (on file with author).

²⁴⁷ *Id.*

²⁴⁸ *Id.*

the minimum standards. Despite Mallia's indictment on charges related to fraud, the Department of State did not believe it necessary to review the correspondence and information provided by Mallia for accuracy.

The Agreement was to remain in effect until (1) the Town demonstrated compliance with the minimum standards; (2) the Secretary determined that further action is required; or (3) it is terminated at the Secretary's discretion.²⁴⁹

The Agreement was terminated on December 19, 2018, after a final determination that the Town of Ramapo was presently in substantial compliance with the minimum standards required for the administration and enforcement of the Uniform Code.²⁵⁰ While the Department of State removed its oversight officer from the Town, the Division continued to monitor the Town's code enforcement activities.²⁵¹

In an effort to perform an extensive investigation into the best practices of code enforcement, the investigative team attempted to meet with the oversight officer who had been placed in the Town of Ramapo. However, the Department of State refused to make the officer available for an interview, and refused to share any information or documentation related to the oversight officer's observations of the Town's code enforcement activities. The Department of State provided the investigative team with documentation related to the correspondence exchanged between the Department of State and the Town of Ramapo.

²⁴⁹ *Id.*

²⁵⁰ Letter from Rossana Rosado, Secretary of State to Michael Specht, Town of Ramapo Supervisor (Dec. 19, 2018) (on file with author).

²⁵¹ *Id.*

XIII. INVESTIGATORY FINDINGS

Upon the review and consideration of information collected from municipalities, meetings with interested stakeholders, testimony provided at the joint hearing on May 23, 2019, and independent investigative work, the investigative team was able to identify the primary hindrances to the administration and enforcement of the Uniform Code that are collectively endured by several of the municipalities. The principal investigatory finding is that effective enforcement of the Uniform Code has not been sufficiently prioritized by the State or local governments, from the Executive branch all the way to local officials. The investigation found:

- Inadequate training for code enforcement personnel;
- Inadequate recordkeeping for tracking code cases;
- Insufficient penalties for violations;
- Difficulties associated with properties owned by LLCs;
- Persistent vacant and abandoned buildings;
- An upsurge in illegally converted properties;
- Excessive delays and adjournments of cases; and
- An overall lack of resources and support available to assist code enforcement programs;

Notably, as the investigation progressed, the investigative team witnessed marked improvements in the code enforcement activities of several of the municipalities. In many of the

municipalities, open code cases that stretched months, even years, were adjudicated immediately. Properties that were abandoned for months were placarded and vacated. Noticeable violations that were previously ignored were addressed. Most notably, the City of Newburgh, for the first time in a decade, issued warrants against a landlord regarding open violations.

XIII.A. LOW PRIORITY OF CODE ENFORCEMENT

Throughout the investigation, interested stakeholders, including homeowners, first responders, and local officials, repeatedly informed the investigative staff that the primary issue with code enforcement in New York State was the low priority enforcement of the Uniform Code, and other local housing and building codes. At the joint hearing on May 23, 2019, multiple parties, including State and local elected officials, testified regarding the need to create a culture where code enforcement is a priority, rather than the status quo in many municipalities where poor compliance is tolerated.²⁵²

Joe Sauerwin, Chair of Firemen’s Association of the State of New York’s Standards and Codes Committee, testified regarding the 26 individuals killed as a result of a fire on December 4, 1980, at Stouffer’s Inn in Purchase, New York.²⁵³ Officials and investigators concluded that the fire could have been contained, ultimately preventing deaths, if the building had sprinklers.²⁵⁴

²⁵²*Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted* (statement of Assembly Member Ken Zebrowski), *supra* note 177.

²⁵³*Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Joe Sauerwin, Chair, Standards and Codes Committee, FASNY), *supra* note 177 at 347.

²⁵⁴ M.A. Farber, *Blaze at Stouffer’s Described as Arson*, THE NEW YORK TIMES (Jan. 16, 1981).

Mr. Sauerwin testified that as a result of the fire, New York State Legislators promulgated the legislation that was the impetus for the first statewide Uniform Code.²⁵⁵

Representatives from firefighters associations, including the Firemen’s Association of the State of New York (FASNY) and the New York State Fire Marshals and Inspections Association, testified regarding the desperate need to make code enforcement across New York a priority again. In his testimony, Jerry Deluca, the Director of Program and Outreach for FASNY, informed the Committees of what occurs when code enforcement is not a priority; Mr. Deluca described the events of January 23, 2005, known as “Black Sunday,” when three firefighters from the Fire Department of New York (FDNY) died in the line of duty.²⁵⁶ Two of those firefighters died fighting a fire in a Bronx tenement. Two apartments in the tenement were illegally modified using drywall partitions.²⁵⁷ Trapped and unable to find the way to the fire escape because of the unanticipated barrier walls, the six firefighters were forced to jump from windows.²⁵⁸ John G. Bellew and Lieutenant Curtis W. Meyran, command of the Ladder Company 27, were killed in the fall. Brendan Cawley, Jeff Cool, Joe DiBernardo, and Gene Stolowski suffered severe injuries and disabilities, ultimately leading to their early retirement.²⁵⁹ Mr. Deluca echoed the ultimate importance of enforcing the Uniform Code, to prevent the loss of life, injuries, and loss of property.²⁶⁰

The existence of numerous vacancies on the Code Council, the seventeen-member body responsible for reviewing and amending the Uniform Code, gives the impression that code

²⁵⁵ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Joe Sauerwin, Chair, Standards and Codes Committee, FASNY), *supra* note 177 at 347.

²⁵⁶ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Jerry Deluca, Director of Program and Outreach, FASNY), *supra* note 177 at 340.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 341.

²⁶⁰ *Id.* at 342.

enforcement at the State level is a low priority. As of the investigation's onset, there were six vacancies on the Code Council; all of which require the Governor to nominate appointees.²⁶¹ As of this report's issuance, four vacancies remain. The Committees urge the Governor to nominate qualified individuals to these positions without delay.

Based on the information collected, the investigative team found that code enforcement is too often perceived as a nuisance or an inconvenient requirement of local government. As a result, a culture of poor compliance has developed and became the norm in many municipalities. Unfortunately, many stakeholders believe that the prioritization of code enforcement will not occur unless—and until—another tragic fire plagues a New York community as a result of poor compliance.

Based on the information collected, the investigative team found that apathetic enforcement practices, trivial monetary fines for violations, excessive delays of trials, insufficient support from the Department of State, and the elimination of financial support to local governments pursuant to State Finance Law § 54(g), collectively contribute to the neglect in code enforcement throughout New York State.

XIII.B. INADEQUATE TRAINING OF CODE ENFORCEMENT PERSONNEL

With respect to the minimum standards promulgated by the Secretary of State for the training and certification of code enforcement personnel, the Committees found that (1) provisions within the minimum standards as prescribed are insufficient and (2) the Department of State's Division of Building Standards and Codes is neglecting its obligation of affording opportunities for training. Moreover, the insufficient standards and unavailability of adequate

²⁶¹ N.Y. Exec. Law § 374 (McKinney 2013).

training courses are contributing to the insufficient administration and enforcement of the Uniform Code.

Specifically, the Committees find (1) the time within which the basic training program must be completed is unreasonably lengthy and (2) the restrictions on the instructors and course content are unduly restrictive in light of the lack of support from the Division of Building Standards and Codes.

Pursuant to Part 1208, the building safety inspector and code enforcement official basic training program must be completed within 18 months of the first training course attended or 18 months after the date of initial appointment.²⁶² Building safety inspectors and code enforcement officials are required to complete at least 60 and 120 hours of training, respectively.²⁶³ If an individual performs one hour of training a day, five days a week, it would only take 3 months for a building inspector to reach the minimum 60-hour requirement, and a code enforcement officer six months to reach the minimum 120-hour requirement. While it may be difficult for a municipality to find an already certified building inspector or code enforcement official, the Committees believe the time within which basic training programs must be completed is unreasonably long. Having well trained, competent officials conducting fire safety and Uniform Code inspections is critical for the protection of public health and safety.

Additionally, building safety inspectors and code enforcement officers are required, pursuant to Part 1208, to complete certain in-service training courses in order to maintain certification. Building inspectors are required to complete a minimum of 6 hours per year; code enforcement officers are required to complete a minimum of 24 hours per year.²⁶⁴ To satisfy the

²⁶² 19 NYCRR 1208-3.2 (2019).

²⁶³ *Id.*

²⁶⁴ 19 NYCRR 1208-3.3 (2019).

in-service training requirement, a course must meet certain criteria, one of which includes a course developed and presented by the Department of State.²⁶⁵

Throughout the investigation, interested stakeholders—including current and retired building safety inspectors and code enforcement officials—repeatedly informed the investigative team that opportunities for in-service training are very limited, and the courses available are expensive for the local governments and their officials. In testifying to the Committees, F.J. Spinelli, a current Deputy Fire Chief for the Hartsdale Fire District, stated that the Director of the Division of Building Standards and Codes told him the Division lacks the staff to support in-service training.²⁶⁶ Unfortunately, this lack of resources further restricts the courses available—and limits the contents—of in-service training courses. Mr. Spinelli also testified regarding the minimal and deficient online training programs available.²⁶⁷ To reiterate the insufficiency of training programs available, Mr. Spinelli discussed a recent “train-the-trainer” course that he attended in February of 2019. The course, he stated, was a six-hour class that was designed to cover three required code categories; however, it only covered one required category.²⁶⁸ When he inquired about the other two categories, which must be instructed upon, he was informed an online program would be offered to cover the training and “meet the needs of the codes community.”²⁶⁹ Mr. Spinelli informed the Committees that such a program has yet to be offered.²⁷⁰

²⁶⁵ 19 NYCRR 1208-3.3 (2019).

²⁶⁶ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of F. J. Spinelli, Deputy Fire Chief, Hartsdale Fire District, FASNY), *supra* note 177 at 355.

²⁶⁷ *Id.* at 355-56.

²⁶⁸ *Id.* at 355.

²⁶⁹ *Id.* at 355-56.

²⁷⁰ *Id.* at 355.

As its own Director testified, the Division of Building Standards and Codes is responsible for providing training for the basic training certification programs and education to code enforcement officials.²⁷¹ Based on the aforementioned investigative findings, the Committees conclude that the Department of State's Division has failed to meet its training obligations. The Committees urge the Department of State to make the development and provision of adequate training programs a priority.

XIII.C. INADEQUATE RECORDKEEPING FOR TRACKING CODE CASES

A crucial aspect of code enforcement is the reliable tracking and documentation of violations. In several of the municipalities investigated, the impact of inadequate recordkeeping was apparent in the administration and enforcement of the Uniform Code. As part of the investigation, the Committees requested information relating to violations and summons histories for the period of January 1, 2017, to the date of the request. All municipalities had difficulty providing this information. For example, as discussed above, the City of Albany could not offer a definitive number for completed inspections because of issues with officers updating the records on the software. Additionally, municipalities could not offer an accurate number for resolved cases, and their dispositions, because of software related issues or officer failure to update the records as a case progresses.

Even in those municipalities that have more enhanced and efficient recordkeeping software, the investigative team discovered that code enforcement personnel were not adequately trained on how to use the software, leading to inaccuracies in the tracking of code violations. Often, the team found that violation information recorded on the software differed from reports

²⁷¹ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of John Addario, Director, Division of Building Standards and Codes), *supra* note 177 at 295.

given directly to the Committees. Those municipalities that utilize BuildingBlocks for tracking code violations have access to unlimited free training services for their officers.²⁷²

XIII.D. INSUFFICIENT PENALTIES FOR VIOLATIONS

A consistent pattern apparent in all municipalities is the lack of meaningful penalties imposed to deter violations. Fines imposed are often just the “the cost of doing business.” Throughout the investigation, and at the joint hearing before the Committees, numerous stakeholders reiterated that the insignificant fines are trivial to repeat violators. As stated by Joe Sauerwin at the hearing, property owners “[p]ay the garbageman, pay the water bill, oh yeah, and pay the court fine too while you’re at it.”²⁷³ The investigative team found violations that remained uncured for months—sometimes years—but received only minimal fines, often ranging from \$25 to \$250. The municipalities are plagued with habitual violators who can afford the meager penalties imposed. In cases of illegal conversions, these minimal fines are no deterrent when a landlord is receiving “tens of thousands of dollars in rent [from] a single property.”²⁷⁴ It is glaringly evident that to adequately enforce the Uniform Code—and deter repeat violators—much more significant penalties must be imposed.

²⁷² Andrew Kieve, the Co-founder and Chief Executive Office for Tolemi, the creator of BuildingBlocks, informed the Committees of the services provided to its users. The Committees would like to thank Mr. Kieve for his assistance throughout the investigation.

²⁷³ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Joe Sauerwin, Chair, Standards and Codes Committee, FASNY), *supra* note 177 at 347.

²⁷⁴ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Jerry Deluca, Director of Program and Outreach, FASNY), *supra* note 177 at 342.

XIII.E. ISSUES ASSOCIATED WITH PROPERTIES OWNED BY LLCs

A major issue the investigation revealed throughout the municipalities is the difficulty of enforcing the Uniform Code on buildings—both occupied and vacant—owned by LLCs. Currently, § 305 of the Business Corporation Law does not require LLCs registered in New York State to designate a registered agent that may receive process on behalf of the LLC.²⁷⁵ Thus, many municipalities struggle to locate the responsible party, the individual to serve with the notice of violation or order to comply. An example of an LLC’s registration with the State, absent any registered agent, is provided as Exhibit E.

Moreover, even if an LLC does have a registered agent, either in their LLC registration or per a rental registration mandated by a local government, judges have discretion in exercising jurisdiction over the agent or designated individual; in some municipalities, despite being permitted, judges refuse to exercise jurisdiction, and impose penalties, on parties other than the titled owner. This refusal to exercise jurisdiction occurred on the numerous occasions the investigative team observed code court. Additionally, many local officials and staff directly informed the investigative team of this issue.

The lack of accountability of LLCs allows violations to persist, contributing to the difficulties of enforcing the Uniform Code for the protection of public health and safety. This loophole must be addressed on a State level to assist local governments in their code enforcement responsibilities.

²⁷⁵ N.Y. Bus. Corp. Law § 305 (McKinney 2019).

XIII.F. PERSISTENT VACANT & ABANDONED BUILDINGS

Several of the municipalities investigated are plagued with extensive vacant and abandoned buildings. While municipalities are empowered to employ vacancy deterrents, few municipalities codify any penalties for persistent vacancies into their building codes; nevertheless, those municipalities that have, still endure similar issues with curing the properties. The lack of disincentives of property owners and LLCs allow vacancy and abandonment to persist, leading to a decaying housing stock in countless communities.

In particular, the Cities of Mount Vernon and Newburgh are facing a vacant and abandoned buildings crisis; their municipalities repeatedly struggle to locate an individual who can be held responsible for the outstanding violations.²⁷⁶

Approximately 163 vacant buildings in Mount Vernon are LLC owned.²⁷⁷ The following two images depict an abandoned building in the City of Mount Vernon, which was previously owned by an LLC prior to being purchased by a bank. The images are of 19 S. Terrace Ave, which sustained a fire in November of 2015, but was not declared vacant until October of 2018.²⁷⁸ As of the conclusion of this investigation, the building remains in the same condition seen in the images.

²⁷⁶*Id.*

²⁷⁷*Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Chantelle Okarter, Commissioner of Planning, City of Mount Vernon), *supra* note 177 at 273.

²⁷⁸ Per City of Mount Vernon's BuildingBlocks code enforcement recordkeeping software.



The City of Newburgh also faces significant difficulties in addressing the community's extensive vacant and abandoned properties. Despite requiring rentals to register with the City, the municipality encounters the same issues with locating individuals responsible for LLC properties.²⁷⁹ The image below is of 76 Lander Street in the City of Newburgh, which is owned by an LLC with a designated address in New York City. The property has been registered vacant for at least two years.²⁸⁰



²⁷⁹ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Bill Horton, Assistant Fire Chief, City of Newburgh), *supra* note 177 at 168-9.

²⁸⁰ Per City of Newburgh's BuildingBlock code enforcement recordkeeping software.

XIII.G. UPSURGE IN ILLEGALLY CONVERTED PROPERTIES

A common issue shared among the municipalities is the difficulties in identifying—and protecting those who live in—illegally converted homes. The investigative team was able to visit illegally converted homes in several of the municipalities. Two bedroom homes converted to eight separate units, each with individual deadbolts on doors. Units, which did not have a kitchen, but had operating hotplates directly next to highly flammable materials. A garage separated by a false wall to create another “living quarters.” Families living in incredibly cramped units without sufficient means of egress if a fire were to start. Often, these individuals are undocumented immigrants, frightened to file a complaint for fear of retaliation by the landlord. These illegally converted homes can lead to grave consequences for occupants and the first responders who undertake the brave duty of protecting the public from fire-related injuries and death.

Pursuant to Part 1203, a local government must require a certificate of occupancy for “all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another.”²⁸¹ Prior to issuing a certificate of occupancy, a local government must inspect the building or structure to ensure compliance with the Uniform Code.²⁸²

However, the lack of sufficient enforcement and a culture of poor compliance has led to a “build first, ask permission later,” mentality among many building and property owners. Even in situations where a small conversion would be permissible pursuant to the Uniform Code or local law, many refuse to go through the necessary process prior to commencing any conversions.

²⁸¹ 19 NYCRR 1203.3(d) (2019).

²⁸² *Id.*

Over the last two decades, the Town of Ramapo has experienced significant population growth. In 2000, the Town had an estimated population of 108,905; by 2018, the Town's population grew by 25.7 percent to 136,848.²⁸³ The high-density sprawl has overwhelmed the community, leading to a housing availability crisis. Unfortunately, this unchecked expansion has led to dubious building and construction practices, including converting single- and two-family homes into multiple dwelling units without the requisite permits.

The population increase is partly attributable to the substantial growth of Orthodox Jewish communities throughout the Town.²⁸⁴ For many families in these communities, the availability of suitable housing is a major concern because of the need to live in areas walkable to synagogues.²⁸⁵ Moreover, many children in these communities attend yeshivas, non-public schools that incorporate religious studies.²⁸⁶ The investigative team had the opportunity to visit a number of yeshivas, which were often located in a trailer or a room within a home that is designated as single-family, but was subsequently converted into a multi-family property. The severe lack of available space for suitable housing, schools, and synagogues, combined with ineffective code enforcement, resulted in development chaos, ultimately leading to the placement of a State oversight monitor within the Town's Building Department.²⁸⁷

Despite the Department of State's finding that the Town of Ramapo has reached compliance with the minimum standards for enforcement, difficulties in addressing illegally converted homes continue to plague the community. The image provided on the following page is of 238 N. Pascack Road within the Town of Ramapo. Upon first glance, this single-family home may appear to be in compliance with housing and building codes. However, upon

²⁸³ *Quick Facts Ramapo Town, New York*, UNITED STATE CENSUS BUREAU.

²⁸⁴ Richard Liebson, *Ramapo Nears Breaking Point: Special Report*, THE JOURNAL NEWS (Jan. 8, 2017).

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

inspection by the Rockland Codes Initiative, the single-family home had six individual bedrooms, each locked with either a key-lock or padlock. The basement was converted into an apartment that is partially below grade and has no egress windows.²⁸⁸ A non-occupant rented and operated the attached garage as a mechanic and tire shop.²⁸⁹



After conducting two inspections of the property in April and May of this year, the Rockland Codes Initiative, on behalf of the Rockland Department of Health, issued 34 violations, 16 of which are deemed “critical.” The violations were issued pursuant to the Rockland County Sanitary Code, specifically Article XIII, the Housing and Hygiene Occupancy Code. Violations issued include, but are not limited to, the following:

²⁸⁸ Information was provided to the Committees from the Rockland Codes Initiative.

²⁸⁹ *Id.*

- No heat throughout house;
- Portable heaters used in every room;
- Open wire connection and exposed wires in garage;
- No second means of egress through basement windows;
- Excessive clutter in basement;
- No smoke detectors in building;
- No carbon monoxide detectors in building;
- No showerhead in both bathrooms, tenants use buckets to bathe; and
- Every room has either door locks or padlocks; tenant does not have key or access to rooms.²⁹⁰

When asked by the investigative team regarding the failure to issue violations by the Town's Building Department, a representative stated they were not aware of the situation.

Another recent example of the “build first, ask permission later” mentality is 201 Route 306, in Ramapo. The property, which operates as a school and dormitory, received 50 violations from January 1, 2017 to September 1, 2018.²⁹¹ In just 20 months, the school received violations including, but not limited to, the following:

- Overcrowding of dormitory rooms; 12 beds in one room that can legally fit 8;
- Dwelling units occupied by more occupants than permitted by the minimum area requirements;
- Excessive trash and debris in hallways;

²⁹⁰ *Id.*

²⁹¹ Information provided from City of Newburgh's BuildingBlocks code enforcement software.

- Construction occurred without a required permit to perform interior alterations;
- No certificate of occupancy issued for the interior alterations conducted; and
- Air conditioning units blocked egress windows.²⁹²

Generally, fire safety and property maintenance inspections of one- and two-family homes are limited to situations where work has been performed pursuant to a building permit or conditions on the premises threaten or present a hazard to public safety. The Fourth Amendment of the U.S. Constitution protects property owners from certain searches or inspections by government authorities; except in certain circumstances, government officials cannot enter private homes without consent or a search warrant.²⁹³ Therefore, in situations where a property was illegally converted—i.e. no building permit was obtained or conversion does not comply—code officials are unable to inspect without a warrant or the express consent of the owner.²⁹⁴

Nevertheless, a local government can implement procedures that respect the constitutional rights of property owners while simultaneously meeting the needs of code enforcement.²⁹⁵ One potential procedure includes the residential occupancy permit (“ROP”) program implemented by the City of Albany, which requires the inspection of all rental dwellings prior to the issuance of an ROP, which are valid for 30 months.²⁹⁶ However, this policy only addresses illegal conversions when they are in rental properties, not when they are in homes that are owner-occupied. A method to effectively enforce the Unified Code and prevent illegal conversions in privately owned homes must be developed.

²⁹² *Id.*

²⁹³ U.S. Const. amend. IV.

²⁹⁴ Sokolov v. Village of Freeport, 52 NY 2d 341 (1981).

²⁹⁵ TECHNICAL SERIES, DIVISION OF LOCAL GOVERNMENT SERVICES, *supra* note 2, at 20.

²⁹⁶ ALBANY, NY., CODE § 231-130 (1996).

XIII.H. EXCESSIVE DELAYS & ADJOURNMENTS OF CASES

In situations of noncompliance, local governments are empowered to issue appearance tickets, summoning alleged violators to appear before the applicable court.²⁹⁷ If a party fails to appear, local governments may request the presiding judge to issue a bench warrant to effectuate their attendance in court.

The investigation found that in several of the municipalities, many cases with uncured violations have remained open for months, even years. Through multiple adjournments, violators are offered numerous opportunities to cure and come into compliance, allowing dangerous conditions to exist for long periods of time. Several stakeholders testified that cases regarding temporary certificates of occupancy are continuously adjourned until the properties “seemingly fall[] through the cracks.”²⁹⁸ Prosecutors routinely consent to multiple adjournments; permitting uncured violations to persist.²⁹⁹ Unreasonable delays allow cases to languish for months, even years, contributing to the dilution of effective code enforcement.

XIII.I. LACK OF RESOURCES

The lack of resources available to assist local governments with their code enforcement activities was repeatedly evident throughout the investigation and at the joint hearing before the Committees. Inadequate funding and assistance devoted to code enforcement directly contributes to the low prioritization of code enforcement across New York State.

²⁹⁷ 19 NYCRR 1203.5 (2019).

²⁹⁸ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Jonathan Jacobson, Assembly Member), *supra* note 177 at 17.

²⁹⁹ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Ken Zebrowski, Assembly Member), *supra* note 177 at 33.

On several occasions, local officials and enforcement inspectors informed the investigative team of the desperate need for additional funding to assist their code enforcement activities. All of the municipalities expressed a desire to hire additional code enforcement personnel, but claim they do not have the resources to do so. Likewise, municipalities that have inefficient recordkeeping software to track code cases would like to implement better systems, but cannot afford to purchase platforms that would greatly assist their efforts.

In situations where a judge is willing to issue a bench warrant for a party who has failed to appear in court, many municipalities are unable to dedicate the police resources to issue them. Police Departments are overwhelmed and are often forced to prioritize the more serious or immediate crimes.³⁰⁰

The Division of Building Standards and Codes, within the Department of State, is obligated to offer technical assistance and advice to local governments related to their code enforcement activities. However, local officials and first responders have reiterated to both the investigative team and the Committees that the Division routinely fails to provide the services it claims to offer to local governments. Despite being a “well-meaning” group, the Division is described as “weak and ineffective.”³⁰¹ The Division has been accused, on numerous occasions, of failing to meet their obligations, neglecting to provide adequate training for code enforcement officers, code interpretations for enforcement programs, and routine or board variances to building owners.³⁰²

³⁰⁰*Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Joseph Donat, City Manager, City of Newburgh), *supra* note 177 at 174.

³⁰¹*Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Joe Sauerwin, Chair, Standards and Codes Committee, FASNY), *supra* note 177 at 351.

³⁰²*Id.* at 351-52.

The deallocation of funds available for local governments pursuant to Section 54-g of the State Finance Law has significantly reduced the financial resources available to assist code enforcement activities. Pursuant to Insurance Law § 9108, insurance companies are required to collect fire insurance fees from policyholders for fire peril coverage; all funds collected are paid into a “code enforcement” account.³⁰³ Section 54-g of the State Finance Law provides access for local governments to money appropriated by the State—through Insurance Law § 9108—in support of their code enforcement activities.³⁰⁴ However, even though insurance companies still collect the fire insurance fees, the funds have not been made available to local governments since 1991.³⁰⁵ That distribution of these funds has been halted, notwithstanding the manifest need, illustrates the neglect of code enforcement at the State level.

XIII.J. MUNICIPALITY-SPECIFIC FINDINGS

Over the course of the investigation, the investigative team identified specific issues each of the municipalities faced in the sufficient administration and enforcement of the Uniform Code. This section provides an overview of those obstacles. The Committees encourage each municipality to integrate the relevant recommendations discussed in Section XIV into their code enforcement programs.

1. CITY OF ALBANY

The primary obstacles the City of Albany faces with respect to the administration and enforcement of the Uniform Code include: (1) inadequate software, (2) lack of registered agents for limited liability company property owners, (3) insufficient fines, (4) judicial discretion of

³⁰³ N.Y. Ins. Law § 9108 (McKinney 2013).

³⁰⁴ N.Y. St. Fin. Law § 54-g (McKinney 2013).

³⁰⁵ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement Chris Jensen, President, New York State Building Officials Conference), *supra* note 177 at 360.

personal jurisdiction over property managers, and (5) an overall lack of resources available to assist code enforcement officers perform their duties.

Throughout the investigation, representatives from the City of Albany and the Albany Buildings Department greatly assisted the investigative team. The Committees sincerely appreciate Albany's overwhelming cooperation and assistance.

2. CITY OF NEWBURGH

The primary issues the City of Newburgh faces with respect to the administration and enforcement of the Uniform Code include: (1) an inadequate recordkeeping system for code enforcement cases, (2) a lack of registered agents for limited liability company property owners, (3) insufficient fines, (4) a need for more substantive training of code enforcement officials, (5) inadequate procedures to address vacant buildings and (6) an overall lack of resources available to assist code enforcement officers perform their duties.

Over the course of the investigation, the Newburgh Code Department was able to better prioritize code enforcement; the Committees strongly encourages Newburgh to continue its prioritization.

3. CITY OF MOUNT VERNON

The primary hindrances to the City of Mount Vernon's adequate administration and enforcement of the Uniform Code include: (1) the need for additional training for code enforcement software, (2) a lack of registered agents for limited liability company property owners, (3) insufficient fines, (4) the need for more substantive training of code enforcement officials, (5) severe shortage of officials performing code enforcement activities, (6) inadequate procedures to address vacant buildings, and (7) an overall lack of resources available to assist code enforcement officers perform their duties.

The City of Mount Vernon currently employs only one code enforcement officer. As was echoed at the joint hearing, the lack of officials dedicated to code enforcement is bewildering and unacceptable. The Committees strongly encourage the City of Mount Vernon to dedicate resources to its Building Department to employ more adequately trained officers.

4. TOWN OF RAMAPO

The predominant issues hindering the Town of Ramapo's adequate administration and enforcement of the Uniform Code include: (1) inadequate recordkeeping system for code enforcement cases, (2) lack of registered agents for limited liability company property owners, (3) insufficient fines, (4) the need for additional training of code enforcement officials, (5) an upsurge in illegally converted homes, (6) a lack of accountability in supervisory positions, and (7) an overall lack of resources available to assist code enforcement officers perform their duties.

Over the course of the investigation, it was evident that Ramapo's code enforcement program requires further oversight and assistance to ensure the sufficient administration and enforcement of the Uniform Code. The Committees strongly encourage the Department of State to reinstate its program of monitoring and assistance in Ramapo. An in-depth discussion of Ramapo's issues, with specific recommendations, is provided in Section XIV.M.

XIV. RECOMMENDATIONS

The protection of life and property is heavily dependent upon the sufficient administration and enforcement of the Uniform Code. The safety and security of all New York residents and first responders and access to safe housing is a fundamental right, therefore it is the

Committees' opinion that code enforcement must become a statewide priority again. Over the course of the investigation, the investigative team's efforts prompted a number of improvements.

Heading into the 2020 legislative session, the Committees recommend Members of the Legislature develop and pursue legislation addressing the necessary changes to code enforcement. Additionally, given the symbiotic nature of code enforcement, the Department of State and local governments can make vital adjustments immediately. The Committees urge the full Legislature, the Department of State, and local governments to strongly consider the recommendations identified, many of which can be proactively incorporated into current code enforcement programs. Those responsible for administering and enforcing the law must demand a culture of compliance; otherwise, any legislative actions will be ineffectual.

Recommendations relate to the following aspects of the code enforcement:

- Provision of financial assistance to local governments;
- Code Council vacancies;
- Responsibilities of the Department of State;
- Penalties for violations;
- Threats imposed by illegal conversions;
- Adequate remedies for noncompliance;
- Accountability of limited liability companies (LLCs)
- Minimum standards of code enforcement personnel;
- Rental properties & tenant protections;
- Vacant and abandoned buildings; and
- Code enforcement activities of counties.

XIV.A. FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

The failure to prioritize code enforcement is demonstrated in the State's failure to provide financial assistance to local governments for their code enforcement activities. Since 1991, funds made available through State Finance Law § 54-g have not been distributed to local governments, even though the fees which feed the fund are still being collected. Arguably the most important mechanism for assisting local governments, the Committees recommend that the Legislature and the Executive work together to reinstate the distribution of funds for local governments. Legislative and regulatory action will be rendered futile if local governments do not have the financial ability to institute the necessary changes to ensure the proper administration and enforcement of the Uniform Code.

XIV.B. CODE COUNCIL VACANCIES

At the investigation's onset, there were six vacancies on the Code Council: (1) an elected official representing a city with a population under 100,000, (2) an elected official representing a county, (2) an elected official representing a town, (3) an elected official representing a village, (5) a fire service official, and (6) a code enforcement official. All six of these positions require the Governor to nominate appointees.³⁰⁶

Following the joint hearing held on May 23, 2019, the Governor nominated candidates for the positions of fire service official and code enforcement official, both of which had been vacant for at least two years.³⁰⁷ The Senate confirmed both appointments on June 20, 2019.

³⁰⁶ N.Y. Exec. Law § 374 (McKinney 2013).

³⁰⁷ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Jerry Deluca, Director of Program and Outreach, FASNY), *supra* note 177 at 344.

The Committees urge the Governor to appoint qualified individuals to the remaining four vacant positions.

XIV.C. RESPONSIBILITIES OF DEPARTMENT OF STATE

As the authority empowered for ensuring the statewide administration of the Uniform Code, the Department of State has certain oversight responsibilities. The Department of State is obligated to do “all things necessary or desirable to further and effectuate the general purposes and specific objectives” of the Uniform Code.³⁰⁸ It is the opinion of the Committees that the Department of State is not meeting its obligation. The Committees urge the Department of State to review and amend its current regulations to better serve the statewide needs of code enforcement.

1. UNILATERAL PLACEMENT OF OVERSIGHT OFFICIALS

Executive Law § 381 empowers the Secretary of State to take certain specified actions if a local government has failed to adhere to the minimum standards required for the administration and enforcement of the Uniform Code, including issuing an order compelling compliance, filing an action seeking appropriate legal or equitable relief against the local government, designating a county to administer and enforce the Uniform Code instead of the local government, and the Secretary, himself or herself, administering and enforcing the Uniform Code in the place of the local government. For the Town of Ramapo, the Secretary of State decided to issue an order compelling the town to take corrective action to meet the minimum standards required. When the Town failed to raise its code enforcement activities to meet the minimum standards, the Secretary of State entered into an agreement with the Town for the provision of a State oversight official. While such agreements are permissible to compel compliance, the Secretary of State

³⁰⁸N.Y. Exec. Law § 376 (McKinney 2013).

cannot unilaterally place a monitor within a local government; the local government must agree to the oversight activity. The Committees believe as the authority responsible for the statewide administration of the Uniform Code, it is necessary for the Department of State must have the authority to unilaterally implement an oversight official in a local government to ensure compliance. The Committees recommend amending Executive Law § 381(4) to provide for such authority. Without this capability, the oversight duties of the Department of State over local governments' administration of the Uniform Code are significantly restrained.

2. DESIGNATE ADMINISTRATION AND ENFORCEMENT TO COUNTIES

Pursuant to Executive Law § 381, if the Secretary of State determines that a local government is not meeting the minimum standards required, the Secretary of State can designate the county in which a local government is located to carry out the responsibility of administering and enforcing the Uniform Code for buildings within the local government's jurisdiction. Throughout the investigation, the investigative team received calls from counties across New York State, requesting that local governments within their jurisdiction be investigated; such requests highlight the need for additional oversight of local governments.

Executive Law § 381 should be amended to accommodate such requests. Specifically, counties should be empowered to petition the Secretary of State to remove the authority of local governments to administer and enforce the Uniform Code and empower the county to perform the code enforcement responsibilities.

3. STATEWIDE LICENSING SYSTEM

To ensure compliance with the Uniform Code, it is also important to enable property owners and builders the opportunity to adhere to the proscribed standards. In several of the municipalities, parties that violated the Uniform Code were often individuals who could not

afford or locate adequate contractors. Licensed electricians and plumbers, for example, are scarce and property owners often struggle to locate one to perform necessary corrections. A statewide registry of licensed electricians and plumbers, maintained by the Secretary of State, would greatly reduce the difficulties property owners have in the timely correction of violations. The Committees recommend the Secretary of State promulgate the rules and regulations necessary to accomplish this system.

4. STATEWIDE TRACKING SYSTEM

Repeat offenders are a chronic issue for local governments' enforcement of the Uniform Code. Importantly, many property owners and contractors who repeatedly violate the Uniform Code are not confined to one municipality. Thus, any graduated offenses to deter repeat violators would be futile if such individuals are not tracked. The Committees recommend amending Executive Law § 376 to require the Secretary of State to establish a statewide tracking system for code violations and offenders, similar to the program used by the State Department of Motor Vehicles to track moving violations. Uniformity of violations and summons would prove instrumental in deterring repeat offenders, who too often escape from accountability.

5. GRANTING AUTHORITY TO DEPARTMENT OF STATE

Article 18 of the Executive Law empowers the Department of State, and specifically the Secretary of State, to promulgate rules and regulations relating to the administration and enforcement of the Uniform Code. Numerous stakeholders, both in meetings and at the joint hearing, urged the Committees to consider moving the oversight authority from the Department of State to the Office of Fire Prevention and Control within the Department of Homeland Security and Emergency Services. The Committees recommend that the Legislature establish a

task force responsible for determining which oversight agency is best suited to assist local governments administer and enforce the Uniform Code.

XIV.D. PENALTIES FOR VIOLATIONS

A significant hindrance to ensuring compliance with the Uniform Code is the lack of meaningful penalties to deter violations. Often described as the “cost of doing business,” the fines imposed for code violations are trivial in light of the severity of potential consequences, including fire-related injury or death for civilians and first responders. The Committees find that to adequately ensure compliance with the Uniform Code and deter repeat violators, more significant penalties must be imposed.

1. PENALTIES FOR UNIFORM CODE VIOLATIONS

Local governments have broad discretion in determining the minimum and maximum fines applicable for violations of the Uniform Code within their jurisdiction. Throughout the investigation, it was evident that the standard penalties for violations are insufficient to deter violations. In several municipalities, only maximum fines are codified, which often results in minor penalties for offenders, even if a party knowingly violates the Uniform Code. The absence of mandatory minimums permits judicial flexibility to encourage compliance and avoid large fines. However, without a sufficient penalty structure, repeat offenders are not deterred from noncompliance. The Committees recommend establishing mandatory minimums for all violations of the Uniform Code, especially for violations that endanger the life and safety of residents and first responders.

Executive Law § 381 should be amended to include mandatory minimum fines for both minor violations and violations that threaten the safety and welfare of a building’s occupants.

While local governments have discretion in determining the policies and procedures necessary to meet minimum standards for the administration and enforcement of the Uniform Code, the penalties for violations should be uniform. Additionally, Executive Law § 381 should be amended to include deterrents for repeat offenders, such as preventing such individuals from receiving a building or construction permit, or purchasing properties from a land bank or any building that is or has been subsidized by public funds.

2. PENALTIES FOR FAILURE TO COMPLY WITH AN ORDER TO REMEDY

Executive Law § 382 currently mandates that any party who fails to comply with an order to remedy for any violation, is subject to a maximum fine of \$1,000 per day of violation or imprisonment not exceeding one year, or both. Section 381 does not require a mandatory minimum fine to be imposed. Throughout the investigation, the team witnessed violations, minor and severe, that endured for months, but only received meager penalties, some fines as low as \$25 per day of violation. To deter noncompliance, the Committees believe it is crucial to set mandatory minimum fines for failure to comply with an order to remedy.

For violations that create an imminent threat to the safety and welfare of occupants, a heightened fee schedule is critical to deter conduct that jeopardizes the life and safety of the public. Executive Law § 382 should be amended to mandate minimum and maximum fines for violations that are an imminent threat to health and safety, including graduated penalties for repeat violators. S4938, introduced by Senator Carlucci, directly addresses this concern.

S4938, and its companion bill in the Assembly, A2128, introduced by Assembly Member Zebrowski, proposes to amend Executive Law § 382 to provide that any party who fails to comply with an order to remedy a condition that is an “imminent threat to the safety and welfare of the building’s occupants” is punishable by a minimum fine of \$1,000 and a maximum of

\$5,000 per day of violation.³⁰⁹ For a party’s second violation of this classification, the minimum fine imposed is raised to \$5,000 and maximum of \$10,000 per day of violation; the penalty for a party’s third violation is raised to a minimum of \$10,000 per day of violation.³¹⁰ S4938 gives local governments discretion to determine which violations qualify as an “imminent threat to the safety and welfare” of its residents.

By imposing meaningful fines, repeat offenders—who too often leave the court with a slap on the wrist—will be adequately deterred from continuously placing New York residents in danger of injury or death. The Committees strongly urge the passage of legislation to accomplish this deterrent. The Committees also recommend building in protections for tenants from owner wrongdoing.

For violations other than those that threaten imminent harm, the Committees recommend amending Executive Law § 382 to establish a mandatory minimum fine, with graduated increases for repeat offenders. Specifically, Section 382(2) should be amended to add a minimum fine of \$50 to \$100 per day of failure to comply with an order to remedy.

XIV.E. THREATS IMPOSED BY ILLEGAL CONVERSIONS

The proliferation of illegally converted buildings is plaguing communities throughout New York State. Illegally converted homes create dangerous situations for both occupants and first responders. Building alterations, such as false walls and converted attics, impede the egress from such building during a fire or other emergency evacuation. Given the unique and severe dangers imposed, the penalties for illegally converting buildings must be significant. The

³⁰⁹ S4938, 2019-2020 Sen. (Ny. 2019)

³¹⁰ *Id.*

Committees recommend amending Executive Law § 382 to include a mandatory minimum and maximum fee schedule for parties that illegally alter or convert buildings.

1. PENALTIES FOR ILLEGAL CONVERSIONS THAT IMPEDE EGRESS

S1714, introduced by Senator Brooks, amends Executive Law § 382 to include a penalty for illegal conversions of a building that impedes a person's egress during a fire or other emergency evacuation.³¹¹ The bill imposes a civil penalty up to \$7,500 for such illegal conversions. The Committees recommend that the Legislature consider this bill in the next session.³¹²

2. RECKLESS ENDANGERMENT OF EMERGENCY SERVICE PERSONNEL

Housing and building codes, including the Uniform Code, exist to protect residents and first responders from the dangers posed by fire and inferior construction methods. Responding to a fire is inherently dangerous, but that danger is intensified by the improper conversion and alteration of buildings. The dangers imposed by illegal conversions are grave, as was seen on the infamous "Black Sunday" in New York City in January of 2005. More recently, in 2011, firefighters were called to a smoke-filled single family home in Haverstraw, Rockland County, which was illegally converted to a rooming house. A disoriented firefighter ran out of air, and had to issue a mayday call. Fortunately, fellow firefighters were able to use a thermal imaging device to locate him before it was too late. The owner of the rooming house had been issued a violation two weeks before the fire.

Illegally converted buildings gravely endanger first responders. It is unconscionable that an individual would place the safety of occupants and first responders at risk for the sake of their

³¹¹ S1714, 2019-2020 Sen. (Ny. 2019)

³¹² *Id.*

own profits; such individuals must be held accountable for the serious threats their violations pose.

S6264, introduced by Senator Carlucci, speaks directly to this crucial issue, by establishing the offenses of reckless endangerment of an emergency service person in the first and second degree.³¹³ An individual is guilty of reckless endangerment in the second degree when, knowing that a building permit is required, and without such a permit, he or she converts any building in violation of the Uniform Code in a manner that impedes a person's egress during a fire or other emergency evacuation, which results in the injury of an emergency service person.³¹⁴ An individual is guilty in the first degree when he or she commits reckless endangerment in the second degree and (1) during the event such conduct results in the death of an emergency service person or (2) has previously been convicted in the last ten years of this crime in either the first or second degree.³¹⁵

Importantly, this bill holds those parties responsible for the injury or death of those that provide the invaluable service of keeping New York residents safe, despite jeopardizing their own health and safety.³¹⁶ The Committees recommend the Legislature consider this bill in the next session.

XIV.F. ADEQUATE REMEDIES FOR NONCOMPLIANCE

In situations of noncompliance, local governments must have adequate remedies available to assist their code enforcement activities. The Committees recommend amending the Executive Law or the promulgation of a rule to expand the limited remedies available.

³¹³ S6264, 2019-2020 Sen. (Ny. 2019)

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

1. ARREST AND BENCH WARRANTS

If a party fails to appear pursuant to an appearance ticket or other instrument, the local court is empowered to issue an arrest warrant or a bench warrant for failure to appear on a rescheduled or an adjourned date.³¹⁷ A warrant must contain certain requisite information to empower police to execute it; the name and birthdate of the defendant must be provided. Police departments across New York State use “eJusticeNY” to broadcast warrants to departments in other jurisdictions. To input the warrant into eJusticeNY, the date of birth of the defendant is required; therefore, while a warrant can be executed by the appropriate local police department, it cannot be disseminated across the state. Moreover, without a birthdate of the defendant, police officers are reluctant to execute an arrest or bench warrant because of the risk of serving or arresting the wrong person.

Moreover, an arrest or bench warrant issued by a city, town or village court may be executed in the county of issuance or in any adjoining county and anywhere else in the state upon the written endorsement of a local criminal court of the county in which the defendant is to be taken into custody.³¹⁸

Given these hindrances, the Committees recommend the Secretary of State promulgate a rule requiring local governments to require any party who proposes to do work that involves a building permit or certificate of occupancy or compliance, to provide specific identification information, including the date of birth. If the owner of the building resides outside of the county in which the building is located or if the building is owned by an LLC, the information of a designated individual authorized to receive process must be provided. Requiring the disclosure of this information will assist local governments in situations of noncompliance by ensuring that

³¹⁷ Criminal Procedure Law §§ 120.10, 530.70.

³¹⁸ Criminal Procedure Law §§ 120.70, 530.70

there is someone to be held accountable, and if need be, that the requisite information to issue and properly execute a warrant is available.

During the investigation, the City of Newburgh, for the first time in ten years, executed warrants against a landlord who failed to appear in court on several occasions related to open code violations at three properties.

2. JUDICIAL RELIEF

Currently, Executive Law § 382 permits local governments to seek an order for the removal of a building or an abatement of the condition from a justice of the Supreme Court in the judicial district in which the building is located. Throughout the investigation, it was evident that requiring a local government to file with a Supreme Court is a significant hindrance to addressing outstanding code violations and dealing with buildings that are abandoned or in disarray. Filing for action in a Supreme Court is costly, and often takes six to twelve months before an initial hearing. Moreover, it is counter intuitive that a local judge that has presided over a case for months, even years, must relinquish jurisdiction to the applicable Supreme Court. Executive Law § 382 should be amended to allow the judge that exercises jurisdiction over a municipality's "code court" to exercise jurisdiction over condemnation or abatement proceedings. Additionally, the Committees recommend amending Section 382 to include a mandated uniform timeline for hearing code violations and limiting adjournments to remediate violations in order to reduce the lengthy delays for judicial decisions and incentivize rapid remediation.

3. UNPAID FINES

Despite identifying and prosecuting code violations, many municipalities are unable to collect fines. Municipalities struggle to identify who to collect from, especially in situations of LLC-owned or abandoned buildings.

Allowing municipalities to treat unpaid fines as delinquent taxes and impose tax liens upon the real property, will hold those who hide behind LLCs, or abandon buildings and never look back, accountable. S4175, introduced by Senator Gaughran, affords municipalities this remedial option.³¹⁹ This legislation enables municipalities to treat unpaid building and fire code fines as liens on the affected property.³²⁰ Additionally, S4175 permits properties to be foreclosed upon, pursuant to annual tax foreclosure proceedings, if the fines remain unpaid.³²¹ Faced with the prospect of the property being sold at a tax sale, S4175 will likely incentivize property owners to pay their outstanding fines to the municipality. S4175 passed the Senate on May 5, 2019; its counterpart in the Assembly, A1280, remains in the Assembly's Real Property Taxation Committee. The Committees strongly urge the Assembly to pass this bill. The Committees further recommend authorizing local governments to adopt laws permitting localities to make emergency repairs and to recoup the cost from the owner.

XIV.G. ACCOUNTABILITY OF LIMITED LIABILITY COMPANIES

The anonymity of Limited Liability Companies (LLCs) hinders the ability of code enforcement programs to enforce the Uniform Code on buildings that list LLCs as owners. Locating an individual who can be served a notice of violation or an order to comply is often a herculean task, especially for abandoned or vacant LLC owned buildings, as there is no

³¹⁹ S4175, 2019-2020 Sen. (Ny. 2019)

³²⁰ *Id.*

³²¹ *Id.*

individual to speak with on the property. Tearing down the veil that protects LLCs from legal responsibilities is crucial in the sufficient enforcement of the Uniform Code.

Currently, under Section 305 of New York Business Corporation Law, LLCs are not required to designate a registered agent for the purpose of service of process.³²² The Committees recommend amending § 305 to require LLCs to designate an agent for service of process; this will tremendously assist local governments in issuing violations against parties who would otherwise remain hidden from enforcement.

S1730, introduced by Senator Skoufis, also proposes to eliminate the unmerited shelters individuals receive by hiding behind LLCs. This bill amends the New York State Tax Law to require LLCs to disclose the individual members of the company when they file a joint tax return for any sale of residential property that it is named the grantor or grantee it.³²³ S1730 applies to residential properties containing one- to four-family dwelling units.³²⁴ It requires the joint tax return be accompanied with a list identifying all the members, managers, and any other authorized persons of the LLC.³²⁵ This practice was successfully implemented in New York City in 2015; S1730 proposes to codify the practice in New York City on a statewide level.³²⁶ By revealing the individuals behind LLC owned residential properties, local governments can more effectively administer and enforce the Uniform Code. This bill passed the Senate on June 17, 2019, and the Assembly on June 20, 2019. The Committees strongly urge the Governor to sign this bill into law.

³²² N.Y. Bus. Corp. Law § 305 (McKinney 2013).

³²³ S1730, 2019-2020 Sen. (Ny. 2019)

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.*

XIV.H. RENTAL PROPERTIES & TENANT PROTECTIONS

Rental properties present unique challenges for enforcement of the Uniform Code. Often, tenants do not file complaints with local governments because they either do not know their rights or, if they do, are afraid of retaliatory evictions. There are several policies local governments can incorporate into their code enforcement programs that not only protect tenants, but also assist their enforcement responsibilities.

1. INCORPORATION OF EVICTIONS AND CODE COURT

As discussed at the hearing by United Tenants of Albany representative Laura Felts, tenants are reluctant to assert their rights to a habitable home for fear of retaliatory evictions. In several of the municipalities, landlords are able to receive a warrant of eviction without first having to cure open violations; landlords can subsequently re-lease the property without bringing the premises into compliance. This disturbing cycle of deplorable conditions must be broken. The Committees recommend establishing a requirement that landlords are ineligible to receive a warrant of eviction if any violations remain uncured for the property at issue. Executive Law § 381 should be amended to require local governments to incorporate such a restriction into their code enforcement programs.

Notably, the Legislature passed legislation in the 2019-2020 Session to extend and strengthen protections for tenants across the State. The Housing Stability and Tenant Protection Act of 2019, introduced by Senator Stewart-Cousins and Assembly Member Heastie, strengthens the existing retaliatory eviction law by prohibiting retaliatory evictions against a tenant who makes a good faith complaint alleging a violation of the warrant of habitability. This Act requires a landlord to prove that the eviction was not in retaliation if it occurs within one year, rather than

only six months, of a tenant making a good faith complaint. This Act was signed into law by Governor Cuomo on June 14, 2019.

2. RENTAL REGISTRY & RESIDENTIAL OCCUPANCY PERMITS

Holding bad acting landlords accountable for the deplorable conditions tenants live in should be a priority throughout the State. In several of the municipalities investigated, enforcement officials had difficulties serving notices of violations and orders to comply because landlords do not reside in the community or the property is owned by an LLC without a registered agent. Establishing a rental registry or license requirement will significantly enhance compliance with applicable building and housing codes, including the Uniform Code. Additionally, it will assist local governments in combatting noncompliance by maintaining records of property owners and requiring inspections of all rental properties.

The Committees recommend the establishment of a statewide rental registration system to assist local governments in holding bad acting landlords accountable. Executive Law § 381 should be amended—or the Secretary of State can promulgate a rule—to require local governments to implement registry requirements within their code enforcement programs.

XIV.I. VACANT & ABANDONED BUILDINGS

Vacant and abandoned buildings are a blight on communities. While municipalities are empowered to execute penalties for vacant and abandoned buildings, few municipalities impose any significant fines to act as a deterrent. The absence of disincentives to property owners permit vacancy and abandonment to persist, leading to a decaying housing stock in countless communities, including the cities of Newburgh and Mount Vernon. To assist local governments

with deterrents, fee schedules for vacant and abandoned buildings should be incorporated into the minimum standards proscribed by the Secretary of State pursuant to 19 NYCRR 1203.

Importantly, local governments do not have to wait for the bureaucratic administrative delays that often plague State agencies, to impose penalties for persistent vacant and abandoned buildings. Thus, the Committees recommend local governments establish programs, such as those in the cities of Albany and Newburgh, which mandate meaningful penalties to deter property owners and LLCs from contributing to the degradation of a community.

XIV.J. MINIMUM STANDARDS FOR CODE ENFORCEMENT PERSONNEL

Executive Law §§ 376-a and 381 authorize the Secretary of State to promulgate rules and regulations with respect to the required number and qualifications of code enforcement personnel.³²⁷ To fulfill this obligation, the Secretary of State adopted 19 NYCRR Part 1208, which sets forth the minimum standards personnel must meet to perform code enforcement activities.

The Secretary of State has broad discretion in determining training and certification requirements of code enforcement officials. It is the opinion of the Committees that the minimum standards promulgated are insufficient. Specifically, the Committees find (1) the basic training period is excessive in length, (2) additional in-service training for personnel is required, (3) the provisions regarding the suspension and/or revocation of certificates are ineffectual, and (4) a minimum standard for the ratio of properties to code enforcement officials is required. The Committees recommend amending Executive Law §§ 376-a and 381 with respect to the concerns discussed in this section.

³²⁷ See *supra* Section VIII.

1. BASIC TRAINING PERIOD

Pursuant to Part 1208, a local government may designate an individual as a building inspector or code enforcement official prior to the completion of the applicable training program so long as the individual is progressing toward completion of the program at a rate that will assure the local government they will complete the program within the required period.³²⁸ Such individuals must complete the applicable training program within 18 months after the date of their appointment.³²⁹ Thus, it follows that an individual can perform code enforcement activities without first completing the training program and becoming certified. Reiterated numerous times, adequate code enforcement is directly related to public safety; therefore, the Committees find the basic training period for designated personnel is unreasonably long. Executive Law § 376-a should be amended to require a program's completion within a reasonable time period, such as three months for building inspectors and six months for code enforcement officials.

2. IN-SERVICE TRAINING REQUIREMENTS

To maintain certification, code enforcement personnel must complete certain in-service training requirements.³³⁰ In several of the municipalities, it was evident that code enforcement personnel lacked the necessary training to properly enforce the Uniform Code. Moreover, the in-service training requirements available are extremely limited and costly. The Committees recommend amending Executive Law § 376-a to require additional in-service training for code enforcement personnel. The Committees urge the Department of State to meet their obligation of developing and providing in-service training courses for code enforcement personnel.

³²⁸ 19 NYCRR 1208-2.2(b)(1)-(2) (2019).

³²⁹ 19 NYCRR 1208-3.2(d) (2019).

³³⁰ 19 NYCRR 1208-3.3 (2019).

3. SUSPENSION AND/OR REVOCATION OF CERTIFICATES

Pursuant to 19 NYCRR Part 1208, and authorized by Executive Law § 376-a, the Secretary of State may suspend or revoke a certification after an Administrative Law Judge's finding that an individual materially failed to uphold their code enforcement duties.³³¹ While an individual must be certified—or currently engaged in the certification process—to perform code enforcement activities, Part 1208 does not prevent personnel from remaining in their official capacity. Rather, according to Department of State representatives, municipalities are able to continue the employment of or hire code enforcement personnel without certifications. Despite regulations prohibiting their ability to perform enforcement activities without a certification, the investigative team was informed that personnel in several municipalities were performing enforcement activities without the necessary certifications. Based on these findings, the Committees recommend amending § 376-a to require the Secretary of State to establish a rule prohibiting individuals with a suspended or revoked certification from remaining employed as code enforcement personnel.

4. RATIO OF REPRESENTATION FOR CODE ENFORCEMENT PERSONNEL

Executive Law § 381 requires the Secretary of State to promulgate rules and regulations relating to the minimum standards required for local governments' code enforcement programs, including the number of staff.³³² The Secretary of State has not established a minimum standard for the number of code enforcement officials of a municipality.³³³ In the four municipalities investigated, the number varied tremendously; the City of Albany employs 13 full time code enforcement personnel for a population of 97,280, City of Newburgh employs four full time

³³¹ 19 NYCRR 1208-3.5 (2019).

³³² N.Y. Exec. Law § 381 (McKinney 2013).

³³³ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of John Addario, Director, Division of Building Standards and Codes), *supra* note 177 at 309.

inspectors for a population of 28,164, City of Mount Vernon employs one full time building inspector for a population of 68,671, and the Town of Ramapo has eight full time and one part time officers for the unincorporated areas of the Town.

When asked whether there should be a minimum standard for the ratio of properties to code enforcement officials, the Director of the Division of Building Standards and Codes informed the Committees that he could not offer an opinion.³³⁴ The less oversight in a municipality could lead to a higher risk of fire incidents and death of civilians and first responders; therefore, the Committees recommend amending Executive Law § 381 to require the Secretary of State to establish a minimum number or required ratio for code enforcement officials based on population.

XIV.K. CODE ENFORCEMENT ACTIVITIES OF COUNTIES

Throughout the investigation, code enforcement appeared to be a low priority for many local governments and their elected officials. As previously mentioned, numerous municipalities, including counties, contacted the investigative team, requesting to be investigated. Unfortunately, counties do not currently have any authority to enforce the Uniform Code in buildings within the jurisdiction of local governments in their county, even if it is apparent the local government is failing to perform its code enforcement responsibilities. In such situations, the Committees recommend filing a complaint with the Department of State's Division of Building Standards and Codes.

The direct relationship between code enforcement and public health and safety makes ensuring compliance critical. The Committees urge those counties who wish to become more involved in the protection of their residents and first responders to follow the lead of Rockland

³³⁴ *Id.*

County, which established the Rockland Codes Initiative (RCI) to protect the health, property, and quality of life for all county residents through the enforcement of health and sanitary codes.

The RCI was established in April of 2015 within the Rockland County Department of Health, as a program to combat health, housing, and fire safety issues in homes and buildings across the County. RCI enforces the New York State Public Health Law as well as the Rockland County Sanitary Codes. Most commonly, the RCI uses Article 13 of the Sanitary Codes to address serious conditions that endanger residents and first responders. Pursuant to Article 13, a violation is punishable by a fine no more than \$2,000 per day of violation. The RCI is able to assess fines that reach in the tens of thousands, some as reaching as high as \$40,000 for violations. While these fines are assessments, not collections, the threat of meaningful penalties spurred significant compliance.³³⁵

RCI employs six inspectors to examine properties for compliance with State law and the Sanitary Codes.³³⁶ In 2018, RCI received 1,528 complaints and conducted 6,482 inspections, which resulted in 9,302 violations, total housing fines assessed at \$207,855. Since the program's establishment in 2015, RCI conducted 22,225 inspections, issued 28,279 violations, and assessed \$1,701,033 in housing fines.³³⁷ Of the total fines, 54.36 percent, or \$924,690.50, were assessed for properties within the Town of Ramapo.³³⁸ 57 percent of all complaints received by RCI were for properties in Ramapo.³³⁹

The RCI maintains a multiple-dwelling rental registry, which requires any landlord who rents three or more units to pay a one-time fee of \$25 per unit, and register with the Rockland

³³⁵ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Catherine Southern Johnson, Deputy Commissioner of Health, Rockland County Department of Health, Rockland Codes Initiative), *supra* note 177 at 209.

³³⁶ *Id.* at 207.

³³⁷ Information provided to Committees by Rockland Codes Initiative.

³³⁸ *Id.*

³³⁹ *Id.*

County Department of Health. The registration requires the identity of the property owner as well as the designation of an authorized agent who resides in Rockland County. Complaints from the public are a major source of investigations of the RCI; through the establishment of a “Healthy Neighborhoods” component, RCI has expanded the concept of “enforcement” to the public, by educating residents of their rights and enabling them to demand fair and safe housing.³⁴⁰

The Committees strongly recommend any county representatives concerned with the safety and welfare of residents and first responders due to the lack of adequate code enforcement to consider developing a program similar to the Rockland Codes Initiative.

XIV.L. TOWN OF HEMPSTEAD

In the final stage of the investigation, the Supervisor’s Office in the Town of Hempstead and Senator John Brooks reached out to the investigative team, alleging misconduct in the Building Department and requesting it to be investigated. Given the timing of the request at the conclusion of the investigation, the investigative team was only able to review evidence submitted by Town representatives.

The Town of Hempstead was among the communities most significantly impacted by Hurricane Sandy. Over seven years later, the Town is still trying to recover from the devastation. It has been alleged to the Committees that the Town of Hempstead’s Building Department has neglected to serve its community by failing to proactively notify Hempstead homeowners of the structural damage determination as a result of Hurricane Sandy. After a disaster, FEMA requires municipalities to perform Preliminary Damage Assessments (“PDAs”) to obtain a total estimate

³⁴⁰ *Joint Hearing: To Examine House Code Enforcement across New York State can be Enhanced or Assisted*, (statement of Catherine Southern Johnson, Deputy Commissioner of Health, Rockland County Department of Health, Rockland Codes Initiative), *supra* note 177 at 223.

of monetary damage throughout the community and to determine what structures require immediate attention because they are a hazard to public safety. The PDAs of impacted structures allow FEMA to determine if a community has met the required threshold for federal assistance programs.

Following Hurricane Sandy, the Town of Hempstead's Building Department performed damage assessments of structures. Rather than proactively disseminating the determinations to property owners, the PDAs were allegedly filed away in the Town's Building Department. Countless homeowners impacted by Hurricane Sandy were, or remain, unaware of their PDAs, according to the Supervisor's Office.

PDAs are a crucial step in the recovery process. A substantial or severe damage assessment indicates whether a homeowner will need to take mitigation measures, such as elevating their homes. If a homeowner or resident did not apply for a permit when performing post-Sandy repairs, they may not have been aware of their property's PDA determination. Due to the alleged concealment of the PDAs, residents are now faced with homes that are unmarketable because of outstanding mitigation requirements.

Town of Hempstead representatives informed the investigative team of their serious concerns with the municipality's Building Department. Town representatives have alleged that officials are unfairly delaying issuing building permits, concealing PDAs from residents, and disregarding violations and expediting permits on a selective basis.

Given the Supervisor's and Senator's genuine concerns, combined with their efforts to help the community post-Hurricane Sandy, the Committees strongly encourage the Department of State to formally and fully investigate the Hempstead Building Department and consider further intervention, including, but not limited to, the placement of a state monitor.

XIV.M. TOWN OF RAMAPO

Over the course of the investigation, the Town of Ramapo's failure to properly administer and enforce the Uniform Code was evident. Despite the placement of a state oversight official to monitor the Town's code related activities, the Committees believe Ramapo is not meeting its responsibility of protecting residents and first responders from the dangers imposed by improper construction and open violations. Thus, given the history of corruption and the culture of non-compliance that plagues the Town of Ramapo, the Committees recommend that the Rockland County District Attorney retain the authority to prosecute code violations. The Committees further encourage the Department of State and the Town of Ramapo to enter into another agreement enabling an oversight officer to assist the Town with its code enforcement activities.

While the Town of Ramapo's City Court currently adjudicates code violations once every three weeks, representatives from the Town informed the investigative team that it is currently exploring adjudicating housing and building violations on a more frequent basis. To sufficiently address open violations and foster compliance, the Committees strongly encourage the Town of Ramapo to adjudicate code violations at least once a week.

The Town of Ramapo has failed to embrace a partnership with the Rockland Codes Initiative; unlike other towns in Rockland County, the Town of Ramapo has been disinclined to collaborate with the Rockland Codes Initiative on open violations. The Committees strongly encourage the Town of Ramapo to fully cooperate and embrace the successful efforts of the Rockland Codes Initiative.

EXHIBIT A

§ 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. NOTWITHSTANDING THE ABOVE, SLEEPING QUARTERS IN A CHILDREN'S OVERNIGHT CAMP AS DEFINED IN SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED NINETY-TWO OF THE PUBLIC HEALTH LAW SHALL BE GOVERNED BY SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED NINETY-FOUR OF SUCH LAW.

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

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.

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.

5. 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-A. STANDARDS FOR INSTALLATION OF CARBON MONOXIDE DETECTORS REQUIRING THAT EVERY ONE OR TWO-FAMILY DWELLING, OR ANY DWELLING ACCOMMODATION LOCATED IN A BUILDING OWNED AS A CONDOMINIUM OR COOPERATIVE IN THE STATE OR ANY MULTIPLE DWELLINGS SHALL HAVE INSTALLED AN OPERABLE CARBON MONOXIDE DETECTOR OF SUCH MANUFACTURE, DESIGN AND INSTALLATION STANDARDS AS ARE ESTABLISHED BY THE COUNCIL. CARBON MONOXIDE DETECTORS REQUIRED BY THIS SECTION ARE REQUIRED ONLY WHERE THE DWELLING UNIT HAS APPLIANCES, DEVICES OR SYSTEMS THAT MAY EMIT CARBON MONOXIDE OR HAS AN ATTACHED GARAGE. FOR PURPOSES OF THIS SUBDIVISION, MULTIPLE DWELLING MEANS A DWELLING WHICH IS EITHER RENTED, LEASED, LET OR HIRED OUT, TO BE OCCUPIED, OR IS OCCUPIED AS THE TEMPORARY OR PERMANENT RESIDENCE OR HOME OF THREE OR MORE FAMILIES LIVING INDEPENDENTLY OF EACH OTHER, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: A TENEMENT, FLAT HOUSE, MAISONETTE APARTMENT, APARTMENT HOUSE, APARTMENT HOTEL, TOURIST HOUSE, BACHELOR APARTMENT, STUDIO APARTMENT, DUPLEX APARTMENT, KITCHENETTE APARTMENT, HOTEL, LODGING HOUSE, ROOMING HOUSE, BOARDING HOUSE, BOARDING AND NURSERY SCHOOL, FURNISHED ROOM HOUSE, CLUB, SORORITY HOUSE, FRATERNITY HOUSE, COLLEGE AND SCHOOL DORMITORY, CONVALESCENT, OLD AGE OR NURSING HOMES OR RESIDENCES. IT SHALL ALSO INCLUDE A DWELLING, TWO OR MORE STORIES IN HEIGHT, AND WITH FIVE OR MORE BOARDERS, ROOMERS OR LODGERS RESIDING WITH ANY ONE FAMILY. NEW CONSTRUCTION SHALL MEAN A NEW FACILITY OR A SEPARATE BUILDING ADDED TO AN EXISTING FACILITY.

5-B. 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.

5-c. 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 IRREPAIRABLE ² 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 THEREFORE ³ IS FILED WITHIN THREE BUSINESS DAYS AFTER SUCH WORK IS COMMENCED.

5-D. STANDARDS FOR INSTALLATION OF CARBON MONOXIDE DETECTING DEVICES REQUIRING THAT THE OWNER OF EVERY BUILDING THAT CONTAINS ONE OR MORE RESTAURANTS AND THE OWNER OF EVERY COMMERCIAL BUILDING IN THE STATE

SHALL HAVE INSTALLED IN SUCH BUILDING AND SHALL MAINTAIN OPERABLE CARBON MONOXIDE DETECTING DEVICE OR DEVICES OF SUCH MANUFACTURE, DESIGN AND INSTALLATION STANDARDS AS ARE ESTABLISHED BY THE COUNCIL. CARBON MONOXIDE DETECTING DEVICES SHALL ONLY BE REQUIRED IF THE RESTAURANT OR COMMERCIAL BUILDING HAS APPLIANCES, DEVICES OR SYSTEMS THAT MAY EMIT CARBON MONOXIDE OR HAS AN ATTACHED GARAGE.

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.

11. STANDARDS FOR BUILDINGS SHALL AUTHORIZE THE INSTALLATION OF POTABLE WATER HEATERS FOR ALL DOMESTIC USES, INCLUDING SPACE HEATING.

12. [AS ADDED BY L.1995, C. 132 . SEE, ALSO, SUBD. 12 BELOW.] A. STANDARDS FOR BED AND BREAKFAST DWELLINGS SHALL BE PROMULGATED FOR FIRE SAFETY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, FOR THE PURPOSES OF THIS SUBDIVISION A “BED AND BREAKFAST DWELLING” SHALL INCLUDE

AN OWNER-OCCUPIED RESIDENCE PROVIDING AT LEAST THREE BUT NOT MORE THAN FIVE ROOMS FOR TEMPORARY TRANSIENT LODGERS WITH SLEEPING ACCOMMODATIONS AND A MEAL IN THE FORENOON OF THE DAY. SUCH STANDARDS SHALL DISTINGUISH BED AND BREAKFAST DWELLINGS FROM ONE AND TWO FAMILY DWELLINGS, PROVIDE SPECIFIC OPTIONS FOR HARD-WIRED SINGLE-STATION SMOKE DETECTORS AND PROVIDE A NOTICE TO EACH GUEST THAT CONTAINS:

- (I) THE LOCATION OF NEAREST EXITS AND FIRE ALARMS;
- (II) PROCEDURES TO BE FOLLOWED WHEN FIRE OR SMOKE DETECTORS GIVE WARNING; AND
- (III) PROCEDURES TO BE FOLLOWED IN THE EVENT OF FIRE OR SMOKE DEVELOPMENT.

B. SUCH STANDARDS SHALL ALSO INCLUDE EGRESS DESIGN OPTIONS TO PRESERVE THE AESTHETIC CHARM AND HISTORICAL SIGNIFICANCE OF SUCH DWELLINGS THAT SHALL BE LIMITED TO ONE OF THE FOLLOWING:

- (I) AN AUTOMATIC SPRINKLER HEAD IN THE STAIRWELL AREA OF ANY MEANS OF EGRESS;
- (II) AN EXTERNAL SECOND FLOOR EGRESS; OR
- (III) A PORTABLE ESCAPE DEVICE FOR EACH GUEST ROOM.

C. THE STANDARDS REQUIRED BY THIS SUBDIVISION SHALL BE PROMULGATED AND IMPLEMENTED NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH.

12. [AS ADDED BY L.1995, C. 532 . SEE, ALSO, SUBD. 12 ABOVE.] STANDARDS FOR HOSPICE RESIDENCES, AS DEFINED IN SECTION FOUR THOUSAND TWO OF THE PUBLIC HEALTH LAW , WHICH SHALL BE DEEMED TO BE EITHER A SINGLE FAMILY DWELLING OR A TWO FAMILY DWELLING FOR THE PURPOSES OF LOCAL LAWS AND ORDINANCES RELATING TO FIRE SAFETY AND BUILDING CONSTRUCTION STANDARDS.

13. STANDARDS FOR THE ABANDONMENT OR REMOVAL OF HEATING OIL STORAGE TANKS AND RELATED PIPING IN CONNECTION WITH THE CONVERSION OF LIQUID FUEL BURNING APPLIANCE TO ALTERNATIVE FUEL REQUIRING:

A. THE ENTIRE CONTENTS OF THE HEATING OIL STORAGE TANK AND RELATED PIPING SHALL BE EMPTIED, CLEANED AND PURGED OF ALL VAPOR. THE CONTENTS OF THE STORAGE TANK AND RELATED PIPING SHALL BE REMOVED FROM THE PREMISES OR PROPERTY AND DISPOSED OF IN ACCORDANCE WITH APPLICABLE LOCAL, STATE OR FEDERAL RULES AND REGULATIONS;

B. IF THE HEATING OIL STORAGE TANK IS TO BE ABANDONED IN PLACE, THE VENT LINE SHALL REMAIN OPEN AND INTACT, UNLESS THE TANK IS FILLED WITH AN INERT MATERIAL. THE OIL FILL PIPE AND OTHER RELATED PIPING SHALL EITHER BE REMOVED, OR THE OIL FILL PIPE SHALL BE FILLED WITH CONCRETE;

C. IF THE HEATING OIL STORAGE TANK IS TO BE REMOVED, THE VENT LINE, OIL FILL PIPE AND RELATED PIPING SHALL ALSO BE REMOVED, OR THE OIL FILL PIPE SHALL BE FILLED WITH CONCRETE;

D. AN APPROPRIATE AND QUALIFIED INSPECTOR, AS DETERMINED BY THE LOCAL GOVERNMENT, SHALL CAUSE AN INSPECTION TO BE MADE OF THE ABANDONMENT OR REMOVAL IN CONNECTION WITH THE CONVERSION TO DETERMINE CONFORMITY WITH THE UNIFORM CODE; PROVIDE 4, HOWEVER, THAT THE LOCAL GOVERNMENT OFFICIAL MAY WAIVE SUCH INSPECTION FOR GOOD CAUSE SHOWN; AND

E. NO APPROVAL OF SUCH ABANDONMENT OR REMOVAL SHALL BE GRANTED UNLESS WRITTEN PROOF OF THE HEATING OIL STORAGE TANK'S OIL FILL PIPE HAVING BEEN REMOVED OR FILLED WITH CONCRETE IN ACCORDANCE WITH APPROPRIATE PROVISIONS OF THE UNIFORM CODE HAS BEEN PROVIDED BY THE PROPERTY OWNER TO THE LOCAL INSPECTOR OR, IN THE EVENT THAT AN INSPECTION HAS BEEN WAIVED FOR GOOD CAUSE SHOWN, TO THE LOCAL GOVERNMENT OFFICIAL.

F. FOR THE PURPOSES OF THIS SUBDIVISION, "HEATING OIL STORAGE TANK" SHALL MEAN A TANK USED FOR STORING HEATING OIL FOR CONSUMPTIVE USE ON THE PREMISES WHERE STORED.

G. IN CITIES WITH A POPULATION OF OVER ONE MILLION, SUCH CITIES' LOCAL CODE PROVISIONS SHALL BE AT LEAST AS STRINGENT AS THE PROVISIONS OF THIS SUBDIVISION.

14. PROVIDE THAT ANY:

A. GATES REQUIRED TO BE PROVIDED IN A SWIMMING POOL ENCLOSURE SHALL BE SELF-CLOSING AND SELF-LATCHING WITH THE LATCH HANDLE LOCATED WITHIN THE

ENCLOSURE AND AT LEAST FORTY INCHES ABOVE GRADE, AND SHALL BE SECURELY LOCKED WITH A KEY, COMBINATION OR OTHER CHILD PROOF LOCK SUFFICIENT TO PREVENT ACCESS TO SUCH SWIMMING POOL THROUGH SUCH GATE WHEN SUCH SWIMMING POOL IS NOT IN USE OR SUPERVISED;

B. RESIDENTIAL OR COMMERCIAL SWIMMING POOL CONSTRUCTED OR SUBSTANTIALLY MODIFIED AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH SHALL BE EQUIPPED WITH AN ACCEPTABLE POOL ALARM CAPABLE OF DETECTING A CHILD ENTERING THE WATER AND OF GIVING AN AUDIBLE ALARM; AND

C. [AS ADDED BY L.2007, C. 75 . SEE, ALSO, PAR. C BELOW.] HOT TUB OR SPA WITH A SAFETY COVER WHICH COMPLIES WITH AMERICAN SOCIETY OF TESTING AND MATERIALS INTERNATIONAL STANDARD F1346 (2003) OR ANY SIMILAR STANDARD WHICH MAY BE APPROVED BY THE COUNCIL OR SWIMMING POOL, OTHER THAN A HOT TUB OR SPA, WITH AN AUTOMATIC POWER SAFETY COVER WHICH COMPLIES WITH AMERICAN SOCIETY OF TESTING AND MATERIALS INTERNATIONAL STANDARD F1346 (2003) OR ANY SIMILAR STANDARD WHICH MAY BE APPROVED BY THE COUNCIL SHALL BE EXEMPT FROM THE PROVISIONS OF PARAGRAPH B OF THIS SUBDIVISION.

C. [AS ADDED BY L.2007, C. 234 . SEE, ALSO, PAR. C ABOVE.] TEMPORARY SWIMMING POOL ENCLOSURE SHALL BE REQUIRED TO BE REPLACED BY A PERMANENT ENCLOSURE WHICH IS IN COMPLIANCE WITH NEW YORK STATE CODES, REGULATIONS OR LOCAL LAWS WITHIN NINETY DAYS FROM THE ISSUANCE OF A LOCAL BUILDING PERMIT OR THE COMMENCEMENT OF THE INSTALLATION OF AN IN-GROUND SWIMMING POOL, WHICHEVER IS LATER. A LOCAL BUILDING DEPARTMENT MAY ISSUE A WAIVER TO ALLOW AN EXTENSION OF SUCH NINETY DAY TIME PERIOD FOR GOOD CAUSE INCLUDING BUT NOT LIMITED TO ADVERSE WEATHER CONDITIONS DELAYING CONSTRUCTION.

15. A. EXCEPT AS OTHERWISE PROVIDED BY STATUTE, NO CHANGE TO THE BUILDING CODE SHALL BECOME EFFECTIVE UNTIL AT LEAST NINETY DAYS AFTER THE DATE ON WHICH NOTICE OF SUCH CHANGE HAS BEEN PUBLISHED IN THE STATE REGISTER, UNLESS THE COUNCIL FINDS THAT:

(I) AN EARLIER EFFECTIVE DATE IS NECESSARY TO PROTECT HEALTH, SAFETY AND SECURITY; OR

(II) THE CHANGE TO THE CODE WILL NOT IMPOSE ANY ADDITIONAL COMPLIANCE REQUIREMENTS ON ANY PERSON.

B. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH A OF THIS SUBDIVISION, THE COUNCIL MAY PROVIDE THAT, IN THE PERIOD DURING WHICH CHANGES TO THE CODE HAVE BEEN ADOPTED BUT ARE NOT YET EFFECTIVE PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, A PERSON SHALL HAVE THE OPTION OF COMPLYING WITH EITHER THE PROVISIONS OF THE CODE AS CHANGED OR WITH THE CODE PROVISIONS AS THEY WERE SET FORTH IMMEDIATELY PRIOR TO THE CHANGE.

16. STANDARDS FOR TEMPORARY SWIMMING POOL ENCLOSURES USED DURING THE INSTALLATION OR CONSTRUCTION OF SWIMMING POOLS REQUIRING THAT ANY SUCH ENCLOSURE SHALL SUFFICIENTLY PREVENT ANY ACCESS TO SUCH SWIMMING POOL BY ANY PERSON NOT ENGAGED IN THE INSTALLATION OR CONSTRUCTION OF SUCH SWIMMING POOL AND SHALL SUFFICIENTLY PROVIDE FOR THE SAFETY OF ANY SUCH PERSON.

EXHIBIT B

LIST OF “OPTED-OUT” LOCAL GOVERNMENTS¹

Municipality	Type	County	Assigned To:
Cato	Village	Cayuga	Cayuga County
Afton	Town	Chenango	Chenango County
Bainbridge	Town	Chenango	Chenango County
Columbus	Town	Chenango	Chenango County
Coventry	Town	Chenango	Chenango County
German	Town	Chenango	Chenango County
Guilford	Town	Chenango	Chenango County
Lincklaen	Town	Chenango	Chenango County
McDonough	Town	Chenango	Chenango County
New Berlin	Town	Chenango	Chenango County
North Norwich	Town	Chenango	Chenango County
Norwich	Town	Chenango	Chenango County
Otselic	Town	Chenango	Chenango County
Oxford	Town	Chenango	Chenango County
Pharsalia	Town	Chenango	Chenango County
Pitcher	Town	Chenango	Chenango County
Plymouth	Town	Chenango	Chenango County
Preston	Town	Chenango	Chenango County
Sherburne	Town	Chenango	Chenango County
Smithville	Town	Chenango	Chenango County
Smyrna	Town	Chenango	Chenango County
Afton	Village	Chenango	Chenango County
Bainbridge	Village	Chenango	Chenango County
New Berlin	Village	Chenango	Chenango County
Oxford	Village	Chenango	Chenango County
Sherburne	Village	Chenango	Chenango County
Smyrna	Village	Chenango	Chenango County
Adams	Town	Jefferson	Jefferson County
Alexandria	Town	Jefferson	Jefferson County
Antwerp	Town	Jefferson	Jefferson County
Brownville	Town	Jefferson	Jefferson County
Cape Vincent	Town	Jefferson	Jefferson County
Champion	Town	Jefferson	Jefferson County
Ellisburg	Town	Jefferson	Jefferson County
Henderson	Town	Jefferson	Jefferson County

¹ Information provided by Linda Baldwin, General Counsel, Department of State. List compiled from information as reported to the Department; list does not include municipalities that have an inter-municipal agreement or use third-party services for enforcement of the Uniform Code.

Hounsfield	Town	Jefferson	Jefferson County
Le Ray	Town	Jefferson	Jefferson County
Lorraine	Town	Jefferson	Jefferson County
Orleans	Town	Jefferson	Jefferson County
Rodman	Town	Jefferson	Jefferson County
Rutland	Town	Jefferson	Jefferson County
Watertown	Town	Jefferson	Jefferson County
Worth	Town	Jefferson	Jefferson County
Adams	Village	Jefferson	Jefferson County
Alexandria Bay	Village	Jefferson	Jefferson County
Antwerp	Village	Jefferson	Jefferson County
Brownville	Village	Jefferson	Jefferson County
Glen Park	Village	Jefferson	Jefferson County
Cape Vincent	Village	Jefferson	Jefferson County
West Carthage	Village	Jefferson	Jefferson County
Ellisburg	Village	Jefferson	Jefferson County
Mannsville	Village	Jefferson	Jefferson County
Sackets Harbor	Village	Jefferson	Jefferson County
Deferiet	Village	Jefferson	Jefferson County
Croghan	Town	Lewis	Lewis County
Denmark	Town	Lewis	Lewis County
Diana	Town	Lewis	Lewis County
Harrisburg	Town	Lewis	Lewis County
Martinsburg	Town	Lewis	Lewis County
Montague	Town	Lewis	Lewis County
New Bremen	Town	Lewis	Lewis County
Osceola	Town	Lewis	Lewis County
Pinckney	Town	Lewis	Lewis County
Turin	Town	Lewis	Lewis County
West Turin	Town	Lewis	Lewis County
Croghan	Village	Lewis	Lewis County
Castorland	Village	Lewis	Lewis County
Copenhagen	Village	Lewis	Lewis County
Harrisville	Village	Lewis	Lewis County
Port Leyden	Village	Lewis	Lewis County
Lowville	Village	Lewis	Lewis County
Turin	Village	Lewis	Lewis County
Constableville	Village	Lewis	Lewis County
Lyons Falls	Village	Lewis	Lewis County
Burlington	Town	Otsego	Otsego County
Butternuts	Town	Otsego	Otsego County

Cherry Valley	Town	Otsego	Otsego County
Decatur	Town	Otsego	Otsego County
Edmeston	Town	Otsego	Otsego County
Exeter	Town	Otsego	Otsego County
Hartwick	Town	Otsego	Otsego County
Laurens	Town	Otsego	Otsego County
Maryland	Town	Otsego	Otsego County
Middlefield	Town	Otsego	Otsego County
Morris	Town	Otsego	Otsego County
New Lisbon	Town	Otsego	Otsego County
Otsego	Town	Otsego	Otsego County
Pittsfield	Town	Otsego	Otsego County
Plainfield	Town	Otsego	Otsego County
Richfield	Town	Otsego	Otsego County
Springfield	Town	Otsego	Otsego County
Unadilla	Town	Otsego	Otsego County
Westford	Town	Otsego	Otsego County
Cherry Valley	Village	Otsego	Otsego County
Laurens	Village	Otsego	Otsego County
Milford	Village	Otsego	Otsego County
Morris	Village	Otsego	Otsego County
Cooperstown	Village	Otsego	Otsego County
Richfield Springs	Village	Otsego	Otsego County
Unadilla	Village	Otsego	Otsego County
Covert	Town	Seneca	Seneca County
Fayette	Town	Seneca	Seneca County
Junius	Town	Seneca	Seneca County
Lodi	Town	Seneca	Seneca County
Ovid	Town	Seneca	Seneca County
Romulus	Town	Seneca	Seneca County
Seneca Falls	Town	Seneca	Seneca County
Tyre	Town	Seneca	Seneca County
Varick	Town	Seneca	Seneca County
Waterloo	Town	Seneca	Seneca County
Interlaken	Village	Seneca	Seneca County
Lodi	Village	Seneca	Seneca County
Ovid	Village	Seneca	Seneca County
Waterloo	Village	Seneca	Seneca County
Addison	Town	Steuben	Steuben County
Bolton	Town	Warren	Warren County
Chester	Town	Warren	Warren County

Hague	Town	Warren	Warren County
Horicon	Town	Warren	Warren County
Johnsburg	Town	Warren	Warren County
Lake George	Town	Warren	Warren County
Lake Luzerne	Town	Warren	Warren County
Stony Creek	Town	Warren	Warren County
Thurman	Town	Warren	Warren County
Warrensburg	Town	Warren	Warren County
Lake George	Village	Warren	Warren County
Argyle	Town	Washington	Washington County
Dresden	Town	Washington	Washington County
Fort Ann	Town	Washington	Washington County
Granville	Town	Washington	Washington County
Greenwich	Town	Washington	Washington County
Hampton	Town	Washington	Washington County
Hartford	Town	Washington	Washington County
Hebron	Town	Washington	Washington County
Jackson	Town	Washington	Washington County
Putnam	Town	Washington	Washington County
Salem	Town	Washington	Washington County
White Creek	Town	Washington	Washington County
Whitehall	Town	Washington	Washington County
Argyle	Village	Washington	Washington County
Fort Ann	Village	Washington	Washington County
Granville	Village	Washington	Washington County
Greenwich	Village	Washington	Washington County
Salem	Village	Washington	Washington County
Cambridge	Village	Washington	Washington County
Whitehall	Village	Washington	Washington County
Arcade	Town	Wyoming	Wyoming County
Attica	Town	Wyoming	Wyoming County
Bennington	Town	Wyoming	Wyoming County
Castile	Town	Wyoming	Wyoming County
Covington	Town	Wyoming	Wyoming County
Eagle	Town	Wyoming	Wyoming County
Gainesville	Town	Wyoming	Wyoming County
Genesee Falls	Town	Wyoming	Wyoming County
Java	Town	Wyoming	Wyoming County
Middlebury	Town	Wyoming	Wyoming County
Orangeville	Town	Wyoming	Wyoming County
Perry	Town	Wyoming	Wyoming County

Pike	Town	Wyoming	Wyoming County
Sheldon	Town	Wyoming	Wyoming County
Warsaw	Town	Wyoming	Wyoming County
Wethersfield	Town	Wyoming	Wyoming County
Arcade	Village	Wyoming	Wyoming County
Attica	Village	Wyoming	Wyoming County
Castile	Village	Wyoming	Wyoming County
Gainesville	Village	Wyoming	Wyoming County
Silver Springs	Village	Wyoming	Wyoming County
Wyoming	Village	Wyoming	Wyoming County
Perry	Village	Wyoming	Wyoming County
Pike	Village	Wyoming	Wyoming County

EXHIBIT C

1208-6.2 SUSPENSION OR REVOCATION.

(a) General.

The secretary may suspend or revoke the certification of a building safety inspector or code enforcement official if the Administrative Law Judge conducting a hearing pursuant to section 1208-6.5 of this Subpart finds, after such hearing, that such building safety inspector or code enforcement official has materially failed to uphold his or her code enforcement duties.

(b) Material failure to uphold code enforcement duties – building safety inspector.

For the purposes of this Subpart, a building safety inspector shall be deemed to have materially failed to uphold his or her code enforcement duties if he or she:

- (1) fails to note one or more serious violations of the Uniform Code on an inspection report relating to a fire safety and/or property maintenance inspection, provided that such violations are of a type that should have been observed by a certified building safety inspector exercising reasonable care in the performance of the inspection;
- (2) makes any other material error or omission on an inspection report relating to a fire safety and/or property maintenance inspection, provided that such error or omission is of a type that should not have been made by a certified building safety inspector exercising reasonable care in the performance of the inspection;
- (3) demonstrates, by act or omission, willful misconduct, gross negligence, or gross incompetence in the performance of his or her code enforcement activities;
- (4) performs any code enforcement activity other than fire safety and/or property maintenance inspections of existing buildings; or
- (5) performs any code enforcement activity at a time when his or her certification is inactive or suspended.

For the purposes of paragraphs (1) and (2) of this subdivision, the term *certified building safety inspector* shall have the meaning ascribed to that term by section 1208-1.2(c) of this Part.

(c) Material failure to uphold code enforcement duties – code enforcement official.

For the purposes of this Subpart, a code enforcement official shall be deemed to have materially failed to uphold his or her code enforcement duties if he or she:

- (1) fails to note one or more serious violations of the Uniform Code and/or Energy Code on an inspection report relating to any type of inspection, provided that such serious violations are of a type that should have been observed by a certified code enforcement official exercising reasonable care in the performance of the inspection;

(2) makes any other material error or omission on an inspection report relating to any type of inspection, provided that such error or omission is of a type that should not have been made by a certified code enforcement official exercising reasonable care in the performance of the inspection;

(3) demonstrates, by act or omission, willful misconduct, gross negligence, or gross incompetence in the performance of his or her code enforcement activities; or

(4) performs any code enforcement activity at a time when his or her certification is inactive or suspended.

For the purposes of paragraphs (1) and (2) of this subdivision, the term *certified code enforcement official* shall have the meaning ascribed to that term by section 1208-1.2(d) of this Part.

(d) Matters not constituting a material failure to uphold code enforcement duties.

For the purposes of this Subpart, personnel-related matters such as tardiness, absenteeism, insubordination, rude behavior, and the like shall not be deemed to be a material failure to uphold code enforcement duties.

EXHIBIT D

STATE OF NEW YORK
DEPARTMENT OF STATE

In the Matter of the Investigation by the New York State Department of State, by its Division of Building Standards and Codes, of certain aspects of the administration and enforcement of the State Uniform Fire Prevention and Building Code by the

ORDER ISSUED PURSUANT TO
EXECUTIVE LAW § 381(4)

(FIRST ORDER)

TOWN OF RAMAPO, NEW YORK

TO: TOWN OF RAMAPO, NEW YORK
237 Route 59
Suffern, New York 10901
Attn: Hon. Christopher P. St. Lawrence, Supervisor

PLEASE TAKE NOTICE that this Order is issued by the Executive Deputy Secretary of State pursuant to Executive Law § 381(4), Executive Law § 96, and Public Officers Law § 9.

RECITALS

The Town of Ramapo (the “Town”) is responsible for the administration and enforcement of the State Uniform Fire Prevention and Building Code (the “Uniform Code”) and the State Energy Conservation Construction Code (the “Energy Code”) with respect to buildings and structures located in the Town. See Executive Law § 381(2).

The Town’s administration and enforcement of the Uniform Code must comply, at a minimum, with the standards for administration and enforcement of the Uniform Code as established by regulations adopted by the New York State Secretary of State pursuant to Executive Law § 381(1). Those standards (the “Minimum Standards”) include, but are not limited to, the standards set forth in 19 NYCRR Part 1203.

The New York State Department of State (the “Department”) has conducted a review of certain aspects of the Town’s program for administration and enforcement of the Uniform Code (the “Town’s Code Enforcement Program”).



During the Department's review of the Town's Code Enforcement Program, the Department requested that the Town provide documents, records, and other information and accounts of the Town's activities in connection with administration and enforcement of the Uniform Code, and the Department has reviewed and considered the documents, records, and other information and accounts provided by the Town in response to Department's requests. In addition, employees of the Department's Division of Building Standards and Codes (the "Division") made several visits to the Town's Building Department, interviewed employees of the Town's Building Department, reviewed certain files, and accompanied employees of the Town's Building Department on site visits to certain properties in the Town. In addition, the Department has received information from the New York State Education Department (NYSED) relating to the inspections of non-public schools located in the Town and deficiencies in Education Law § 807-a fire safety reports apparently prepared by an employee of the Town's Building Department.

Executive Law § 381(4) provides that if the New York State Secretary of State determines that a local government has failed to administer and enforce the Uniform Code in accordance with the Minimum Standards, the Secretary is authorized, *inter alia*, to "issue an order compelling compliance by such local government with the [Minimum Standards]."

On June 21, 2013, New York State Secretary of State Cesar A. Perales appointed the undersigned, Anthony Giardina, as the Executive Deputy Secretary of State. Secretary Perales resigned the office of New York State Secretary of State as of February 5, 2016. Upon Secretary Perales' resignation, all powers and duties of the New York State Secretary of State passed to the undersigned Executive Deputy Secretary of State pursuant to Executive Law § 92 and Public Officers Law § 9.

FINDINGS AND DETERMINATIONS

UPON review and consideration of the documents, records, and other information and accounts provided by the Town to the Department; consideration of the observations made by Division employees during their visits to the Town's Building Department and during their site visits to certain properties in the Town; consideration of the negative inferences drawn from the Town's failure to provide certain documentation requested by the Department;¹ and review and consideration of information provided by NYSED to the Department, the Executive Deputy Secretary of State makes the following FINDINGS and DETERMINATIONS:

Finding and Determination 1 (Building Permits): The Minimum Standards provide that, subject to certain exceptions, none of which is applicable here, the Town must not allow any work that must conform to the Uniform Code to be performed unless (i) the owner files an application for a building permit, (ii) the application includes all information and documentation required to allow the Town to determine that the work to be performed will comply with the Uniform Code, (iii) the Town reviews the application and determines that the work described in the application will comply with the Uniform Code, and (iv) the Town issues a building permit. See 19 NYCRR section 1203.3(a).

¹ 19 NYCRR section 1203.4(b) provides that the failure of a local government to provide materials requested by the Department shall permit an inference that the minimum standards of 19 NYCRR Part 1203 have not been met.

The Executive Deputy Secretary of State finds that in connection with at least four (4) properties in the Town:

(1) the Town allowed work that must conform to the Uniform Code to be performed without first requiring the owner to submit a complete and proper application for a building permit (i.e., an application that includes all information and documentation necessary to allow the Town to determine that the proposed work would comply with the Uniform Code), and/or

(2) the Town allowed work that must conform to the Uniform Code to be performed without the Town determining that the proposed work would comply with the Uniform Code, and/or

(3) the Town allowed work that must conform to the Uniform Code to be performed without a building permit, and/or

(4) the Town issued a purported building permit based solely on compliance with the Town's local zoning and land use laws; or upon variances and approvals granted under the Town's local zoning and land use laws, without also determining whether the proposed work would conform to the Uniform Code.

Accordingly, the Executive Deputy Secretary of State determines that the Town has failed to administer and enforce the Uniform Code in accordance with the Minimum Standards relating to building permits and applications for building permits, as set forth in 19 NYCRR section 1203.3(a).

Finding and Determination 2 (Certificates of Occupancy): When work that requires a building permit is performed, the Minimum Standards require the Town to: (i) perform construction inspections at specified stages of construction, (ii) perform final inspection when the work is complete, and (iii) confirm at each such inspection that the work complies with the Uniform Code. See 19 NYCRR section 1203.3(b).

The Minimum Standards also provide that when a building permit has been issued for a building, or a portion of a building, the Town must not permit that building (or portion thereof) to be occupied until and unless (i) the Town performs the required inspections and confirms that the work actually performed complies with the Uniform Code, and (ii) the Town issues a certificate of occupancy.² See 19 NYCRR section 1203.3(d).

The Minimum Standards also provide that the Town must require a certificate of occupancy for "all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another." See 19 NYCRR section 1203.3(d).

² The Minimum Standards contemplate that a certificate of occupancy may be called a "certificate of compliance." For simplicity in this Order, the term "certificate of occupancy" shall mean a certificate of occupancy or a certificate of compliance.

The Minimum Standards, when read together with the applicable provisions of the Uniform Code, provide that the Town must not allow a factory manufactured building³ to be installed or to be used until and unless (i) the Town determines that the factory manufactured building complies with all provisions of the Uniform Code applicable to the intended use of the factory manufactured building, (ii) the Town performs all required inspections during the installation process and confirms at each stage that the installation work actually performed complies with the Uniform Code; and (iii) the Town issues a certificate of occupancy.

The Minimum Standards also provide that the Town must not issue a temporary certificate of occupancy (i.e., a certificate allowing temporary occupancy of a structure or a portion of a structure may not be issued prior to the completion of the work which is the subject of a building permit) unless (i) the Town determines that structure, or the portion of the structure to be occupied temporarily, may be occupied safely, (ii) the Town determines that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and (iii) all required means of egress from the structure have been provided. In addition, the effectiveness of a temporary certificate of occupancy must be limited to a specified period of time during which the permit holder shall undertake to bring the structure into full compliance with applicable provisions of the Uniform Code. See 19 NYCRR section 1203.3(d)(3).

The Minimum Standards also provide that the Town must suspend or revoke a certificate of occupancy that has been issued in error or on the basis of incorrect information if the relevant deficiencies are not corrected within a specified period of time. See 19 NYCRR section 1203.3(d)(4).

The Executive Deputy Secretary of State finds that in connection with at least four (4) properties in the Town:

(1) the Town allowed a building to be used and occupied without a properly issued certificate of occupancy or a temporary certificate of occupancy; and/or

(2) the Town allowed a building, or a portion of a building, to be used and occupied for uses not authorized by a properly issued certificate of occupancy or temporary certificate of occupancy; and/or

(3) the Town allowed a building, or a portion of a building, to be converted from one use or occupancy classification or subclassification to another, and to used and occupied for such new use or occupancy, without a certificate of occupancy for such new use or occupancy; and/or

(4) the Town allowed a building, or a portion of a building, to be used and occupied under a temporary certificate of occupancy where:

(i) the building, or portion thereof, did not comply with the Uniform Code provisions applicable to such use or occupancy, and/or

³ In this order, the term “factory manufactured building” means any building that is not “stick-built” on site, including manufactured homes (sometimes referred to as mobile homes), factory manufactured homes (sometimes referred to as modular homes), and factory manufactured buildings (sometimes referred to as modular buildings).

- (ii) the building, or the portion thereof, contained one or more Uniform Code violations and, accordingly, could not be occupied safely, and/or
- (iii) some or all of the required fire- and smoke-detecting or fire protection equipment had not been installed and/or was not fully operational, and/or
- (iv) not all required means of egress had been provided; and/or

(5) the Town allowed a factory manufactured building that did not comply with the Uniform Code provisions applicable to a particular use to be installed and used for that use; and/or

(6) the Town issued a certificate of occupancy or temporary certificate of occupancy based solely on compliance with the Town's local zoning and land use laws, or upon variances and approvals granted under the Town's local zoning and land use laws, without also determining whether the building, or portion of building, subject to the certificate of occupancy or temporary certificate of occupancy conforms to the Uniform Code; and/or

(7) the Town allowed a building, or a portion of a building, to be used and occupied under a certificate of occupancy or temporary certificate of occupancy that appears to have been issued in error or on the basis of incorrect information, and the Town took no steps to suspend or revoke such certificate.

Accordingly, the Executive Deputy Secretary of State determines that the Town has failed to administer and enforce the Uniform Code in accordance with the Minimum Standards relating to construction inspections, certificates of occupancy, temporary certificates of occupancy, and suspension or revocation of certificates of occupancy, as set forth in 19 NYCRR sections 1203.3(b) and 1203.3(d).

Finding and Determination 3 (Fire Safety and Property Maintenance Inspections): The Minimum Standards provide that the Town must: (i) perform fire safety and property maintenance inspections of buildings which contain an area of public assembly at intervals not to exceed one year; (ii) perform fire safety and property maintenance inspections of all multiple dwellings and all nonresidential occupancies at intervals consistent with local conditions, but in no event shall such intervals exceed one year for dormitory buildings and three years for all other buildings; (iii) have and implement procedures for identifying and addressing unsafe structures and equipment; and (iv) exercise its code administration and enforcement powers in due and proper manner so as to extend to the public protection from the hazards of fire and inadequate building construction. See 19 NYCRR sections 1203.3(h), 1203.3(f), and 1203.2(d).

By letter dated February 12, 2015, the Town's Building Inspector advised the Department that "(a)t this time, the Building Department's software does not allow for the generation of a report that shows a list of all inspections and the date of those inspections. Rather, each property can be searched and a report printed for that property." The Town also did not offer the Department an alternative report or document that describes the Town's system for scheduling and conducting such periodic inspections, and confirming that such inspections are taking place. Without such a report or alternative document, it is highly unlikely that the Town is scheduling and conducting inspections in a manner that assures that all buildings in the Town will be inspected with the

frequency required by the Minimum Standards. Because the Town currently does not have, and is unable to prepare, a list showing the date of the most recent inspection for all buildings in the Town, the Executive Deputy Secretary of State finds that the Town does not have in place a system for scheduling periodic fire safety and property maintenance inspections of all buildings in the Town at intervals that comply with the requirements of 19 NYCRR section 1230.3(h) and assuring that such inspections are being conducted.

By letters dated March 12 and March 17, 2016, NYSED advised the Town, the Department, and others that NYSED has reason to believe that an inspector employed by the Town's Building Department, while conducting Education Law § 807-a inspections of certain non-public schools, failed to record and report significant violations, including but not necessarily limited to inoperable exit doors, dead bolts on exit doors in numerous locations, electrical panels with no covers and exposed wiring, improper use of electrical extension cords, missing electrical device covers, and missing exit signs. The Department is aware that the school authorities in charge of a non-public school, and not the Town, are responsible for seeing that Education Law § 807-a inspections are performed. However, the Executive Deputy Secretary of State finds where an inspector employed by the Town's Building Department does perform Education Law § 807-a inspections, and where it appears that such inspector may have failed to record and report serious violations, the Town's policies and practices relative to performance of periodic fire safety and property maintenance inspections are called into question.

Accordingly, the Executive Deputy Secretary of State finds that sufficient reason exists to determine provisionally that the Town is failing to administer and enforce the Uniform Code in accordance with the Minimum Standards relating to fire safety and property maintenance inspections, procedures for identifying and addressing unsafe structures and equipment, and exercising its code administration and enforcement powers in a due and proper manner, as set forth in 19 NYCRR sections 1203.3(h), 1203.3(f), and 1203.2(d).

Finding and Determination 4 (Recordkeeping): The Minimum Standards provide that the Town must establish and maintain a system of records of the features and activities relating to the Town's Code Enforcement Program. See 19 NYCRR section 1203.3(j).

The Executive Deputy Secretary of State finds that the inability of the Town to generate a report that shows a list of all periodic inspections and the date of those inspections, is one example of the inadequacy of the Town's recordkeeping system.

The Executive Deputy Secretary of State finds that, in the case of certain certificates of occupancy, the Town is unable to produce a copy of the certificate showing the date of the original certificate and maintains no other records documenting the date on which such certificate was issued.⁴

Accordingly, the Executive Deputy Secretary of State determines that the Town has failed to administer and enforce the Uniform Code in accordance with the Minimum Standards relating to recordkeeping, as set forth in 19 NYCRR section 1203.3(j).

⁴ On November 9, 2015, during one of the meetings between employees of the Town's Building Department and employees of the Division, in response to a request by the Division for copies of certain certificates of occupancy, the Town was able to produce only copies printed from a database record. The date on each copy so produced was the date of the printing and not the effective date of the original certificate.

ORDER

Based on the foregoing, and pursuant to Executive Law § 381(4), IT IS HEREBY ORDERED as follows:

ORDERED that the Town shall forthwith (1) review its policies and practices regarding applications for building permits, review of applications for building permits, and issuance of building permits, and (2) take such steps as may be necessary to bring the Town's Code Enforcement Program into full compliance with the Minimum Standards relating to applications for building permits, review of applications for building permits, and issuance of building permits, as set forth in 19 NYCRR section 1203.3(a); and it is further

ORDERED that the Town shall provide the Department, within ten (10) days of the date of this Order, with (1) a written description of the Town's current policies and practices regarding applications for building permits, review of applications for building permits, and issuance of building permits; (2) copies of all permit application forms and instructions regarding those forms that the Town provides or makes available to building permit applicants; (3) copies of all checklists, instructions, forms or other written information that the Town provides to persons who review building permit applications on behalf of the Town; (4) copies of all types of building permits currently issued by the Town; and (5) a written description of such steps as the Town may plan to take to bring the Town's Code Enforcement Program into full compliance with 19 NYCRR section 1203.3(a); and it is further

ORDERED that the Town shall forthwith (1) review its policies and practices regarding construction inspections, certificates of occupancy, temporary certificates of occupancy, and suspension or revocation of certificates of occupancy, and (2) take such steps as may be necessary to bring the Town's Code Enforcement Program into full compliance with the Minimum Standards relating to construction inspections, certificates of occupancy, temporary certificates of occupancy, and suspension or revocation of certificates of occupancy, as set forth in as set forth in 19 NYCRR sections 1203.3(b) and 1203.3(d); and it is further

ORDERED that the Town shall provide the Department, within ten (10) days of the date of this Order, with (1) a written description of the Town's current policies and practices regarding construction inspections, certificates of occupancy, temporary certificates of occupancy, and suspension or revocation of certificates of occupancy; (2) copies of all checklists, instructions, forms or other written information that the Town provides to persons who perform construction inspections on behalf of the Town; (4) copies of all types of certificates of occupancy and temporary certificates of occupancy currently issued by the Town; and (5) a written description of such steps as the Town may plan to take to bring the Town's Code Enforcement Program into full compliance with 19 NYCRR sections 1203.3(b) and 1203.3(d); and it is further

ORDERED that the Town shall forthwith (1) review its policies and practices regarding to periodic fire safety and property maintenance inspections, procedures for identifying and addressing unsafe structures and equipment, and exercising its code administration and enforcement powers in a due and proper manner, and (2) take such steps as may be necessary to bring the Town's Code Enforcement Program into full compliance with the Minimum Standards relating to periodic fire safety and property maintenance inspections, procedures for identifying and addressing unsafe structures and equipment, and exercising its code administration and

enforcement powers in a due and proper manner, as set forth in as set forth in as set forth in 19 NYCRR sections 1203.3(h), 1203.3(f), and 1203.2(d); and it is further

ORDERED that the Town shall provide the Department, within ten (10) days of the date of this Order, with (1) a written description of the Town's current policies and practices regarding periodic fire safety and property maintenance inspections, procedures for identifying and addressing unsafe structures and equipment, and exercising its code administration and enforcement powers in a due and proper manner; (2) copies of all checklists, instructions, forms or other written information that the Town provides to persons who perform fire safety and property maintenance inspections on behalf of the Town; (4) copies of all types of notices issued by the Town to the owner of a building to inform such owner that the building has or has not passed an inspection; and (5) a written description of such steps as the Town may plan to take to bring the Town's Code Enforcement Program into full compliance with 19 NYCRR sections 1203.3(h), 1203.3(f), and 1203.2(d); and it is further

ORDERED that the Town shall forthwith develop an accurate, complete, and up to date list (hereinafter referred to as the "Inspection List") identifying and providing the inspection classification of (1) all buildings in the Town that contain an area of public assembly, (2) all dormitory buildings in the Town, (3) all buildings in the Town currently being used as non-public schools, (4) all multiple dwelling buildings (other than dormitory buildings) in the Town, and (5) and all buildings in the Town that include one or more nonresidential occupancies; and it is further

ORDERED that the Town shall forthwith develop policies and practices for keeping the Inspection List accurate, complete, and up to date; and it is further

ORDERED that the Town shall forthwith develop a schedule (hereinafter referred to as the "Inspection Schedule") for conducting fire safety and property maintenance inspections of all buildings on the Inspection List at intervals that comply with the requirements of 19 NYCRR section 1230.3(h), such Inspection Schedule shall give priority to (1) buildings in the Town that contain areas of public assembly and that have not been inspected by the Town within the last 12 months, (2) dormitory buildings in the Town that have not been inspected by the Town within the last 12 months, (3) non-public schools in the Town that have not been inspected by the Town within the last 12 months and that have not submitted a report of a fire inspection pursuant to Education Law § 807-a to the New York State Department of Education within the last 12 months, (4) multiple dwelling buildings (other than dormitories) in the Town that have not been inspected by the Town within the last 36 months, and (5) buildings that contain one or more nonresidential occupancies and that have not been inspected by the Town within the last 36 months; and it is further

ORDERED that the Town shall submit to the Department, within thirty (30) days of the date of this Order, (1) the Inspection List; (2) a certification as to the accuracy and completeness of the Inspection List signed by the Supervisor of the Town; (3) a description of the Town's policies and practices for keeping the Inspection List accurate, complete, and up to date; and (4) the Inspection Schedule; and it is further

ORDERED that the Town shall immediately following the creation of such Inspection List and Schedule, or sooner if at all possible, begin to perform fire safety and property maintenance inspections of buildings on the Inspection List in accordance with the Inspection Schedule (or, if applicable, in accordance

with the Inspection Schedule as modified by the Department following its review of the Inspection Schedule submitted by the Town); and it is further

ORDERED that the Town shall submit a written report of the inspections it has performed to the Department not less than once every thirty (30) days, starting no later than June 1, 2016 and continuing thereafter until such time as the Department shall have notified the Town in writing that such reports are no longer required; and it is further

ORDERED that the Town shall provide the Department, within ten (10) days of the date of this Order, copies of the reports of all re-inspections of the non-public schools identified in the letter dated March __, 2016 from NYSED to the Town Supervisor or, if such re-inspections have not been performed, a written report describing when such re-inspections will be performed and identifying the person or persons who will perform such re-inspections; and it is further

ORDERED that the Town shall provide the Department, within (10) days of the date of this Order, a list of the inspectors and other personnel employed, or otherwise contracted, by the Town to administer and enforce the Uniform Code in the Town, as well as a description of the qualifications of such personnel; and it is further

ORDERED that the Town shall forthwith establish an appropriate system of records of the Town's Code Enforcement Program; that the Town implement and maintain such system; that the Town provide the Department, within ten (10) days of the date of this Order, with a written report of the status of the Town's recordkeeping system; and it is further

ORDERED that the Town shall forthwith (1) review all local laws, ordinances or other regulations that establish all or any part of the Town's Code Enforcement Program; (2) determine whether the Town's Code Enforcement Program currently has all features required by 19 NYCRR section 1203.3; and (3) determine whether such features comply with all applicable requirements of 19 NYCRR section 1203.3; and it is further

ORDERED that if the Town determines that the Town's Code Enforcement Program does not currently include all features described in 19 NYCRR section 1203.3 and/or that any feature of the Town's Code Enforcement Program does not comply with all applicable requirements of 19 NYCRR section 1203.3, the Town shall promptly take such steps as may be required to modify the Town's Code Enforcement Program in such manner as may be required to bring the Town's Code Enforcement Program into full compliance with 19 NYCRR section 1203.3; and it is further

ORDERED that the Town submit to the Department, within thirty (30) days of the date of this Order, a written report of (1) the Town's review of the local laws, ordinances or other regulations establishing all or any part of the Town's Code Enforcement Program; (2) the Village's determinations regarding compliance by the Town's Code Enforcement Program with the requirements of 19 NYCRR section 1203.3 including, for each feature described in 19 NYCRR section 1203.3, a precise identification of the provision or provisions in the local law, ordinance or other regulation that establishes such feature, and (3) if applicable, the steps taken or to be taken by the Town to modify the Town's Code Enforcement Program in such manner as may be required to bring the Town's Code Enforcement Program into full compliance with 19 NYCRR section 1203.3; and it is further

ORDERED that the issuance of this Order is without prejudice to the right of the Secretary to conduct further investigations of the Town's Code Enforcement Program, to supplement or otherwise amend this Order, to issue further Orders, or to take any one or more of the other actions authorized by Executive Law § 381(4), either individually or in combination in any sequence, as deemed appropriate by the Secretary from time to time.

Dated: Albany, New York
April 18, 2016

A handwritten signature in cursive script, reading "Anthony Giardina", written over a horizontal line.

Anthony Giardina
Executive Deputy Secretary of State

EXHIBIT E

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through June 19, 2019.

Selected Entity Name: [REDACTED]

Selected Entity Status Information

Current Entity Name: [REDACTED]

DOS ID #: [REDACTED]

Initial DOS Filing Date: JUNE 11, 2001

County: ALBANY

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

*Stock Information

# of Shares	Type of Stock	\$ Value per Share
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No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 11, 2001	Actual	[REDACTED]

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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