



Proposed New York City Construction Legislation

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In April of 2021, the New York City Department of Buildings (the “DOB”) announced five bills and sweeping updates to New York City Construction Codes related to construction safety.[1] The simultaneous announcement of the New York City Council’s introduction of the legislation along with the revisions to the construction codes intend to further the objective of increasing the protections afforded to the general public and construction professionals on all construction sites throughout New York City. However, with the enactment of the new legislation and the comprehensive updates to the construction codes, there will be an increase in the obligations placed upon professionals within the industry and an inevitable impact on the industry as a whole. This client alert serves to provide an overview of the legislation and highlight some of the major amendments and updates to the construction code.

NEW CONSTRUCTION SAFETY LEGISLATION

This client alert addresses the five construction safety bills set forth by New York’s City Council. The New York City Council as well as the DOB classified the proposal and enactment of the following bills as an effort to continue the reduction of injuries and fatalities on construction sites within New York City.

Intro. No. 2278: Licensing of General Contractors:

This bill requires that all general contractors within New York City obtain a license through the DOB. This would prohibit any person purporting to be a general contractor from performing work unless approved through the licensing process of the DOB. To become a licensed general contractor there are two requirements to be met.

First, the applicant must possess a Site Safety Training Supervisor card. Second, the applicant must demonstrate their experience in one of three ways:

2.1. Has received, at minimum, a baccalaureate degree from an accredited four-year college or university in the field of engineering, architecture, construction management, building construction/demolition or a degree deemed substantially similar by the department and has at least one year of practical field experience in general construction on buildings; or

2.2. Has a total of at least five years of practical experience working in a construction industry related field, at least three of which shall have been in general construction on buildings, and the balance shall have been in or relating to engineering, architecture, construction/demolition supervision, or construction/demolition project management, or functions deemed substantially similar by the department; or

2.3. Is a New York State licensed Professional Engineer (PE) or Registered Architect (RA) in good standing with the state of New York and with the city of New York for a minimum of three years immediately prior to application.

See Intro. No. 2278 at N.Y.C. Admin. Code § 28-418.7.

Under this legislation, a licensed general contractor would be responsible for all work performed under any permits that were issued under their license, and for all associated work, which includes work performed by a subcontractor. See Intro. No. 2278 at N.Y.C. Admin. Code § 28-418.6. It must be highlighted that under this legislation the DOB would have the authority to pursue disciplinary action against the licensed general contractor, including the suspension or revocation of a general contractor's license, if necessary.

Intro. No. 2278 would amend the following local laws: Section 28-105.5.1 of the Administrative Code of the City of New York; Section 28-401.3 of the Administrative Code of the City of New York; Section 28-401.15 of Title 28 of the Administrative Code of the City of New York; Item 15 of Section 28-401.19 of Title 28 of the Administrative Code of the City of New York; Article 418 of Title 28 of the Administrative Code of The City of New York. Further, Intro. No. 2278 repeals Section

28-401.19.4.2 of Title 28 of the Administrative Code of the City of New York and Article 420 of Chapter 4 of Title 28 of the Administrative Code of the City of New York.

This local law will not take effect until three (3) years after its enactment.

A full copy of Intro. No. 2278, as well as a summary of the amendments, can be found [here](#).

Intro. No. 2263: Requiring DOB Licensed Safety Professionals on Major Construction Work Sites – Expanding the Requirement to Include Buildings Between Seven through Nine Stories:

Prior to this legislation, the New York City Building Code defined “major building” as a construction site involving an existing or proposed building of ten (10) or more stories or 125 feet (38 100 mm) or more in height. This legislation would amend the definition of a “major building” within the New York City Building Code. Specifically, the amended definition would lower the threshold to seven (7) stories and above or 75 feet (22 860 mm) or more in height. The enactment of this legislation would trigger additional site safety requirements at more construction sites. This change would require full-time DOB Licensed Site Safety Coordinators or Site Safety Managers for projects that involve existing or proposed buildings that are more than seven (7) stories or 75 feet (22 860 mm) or more in height. Further, this would require contractors to submit their Site Safety Plans to the DOB for review and approval before work may commence in buildings meeting these criteria.

Intro. No. 2263 amends Section 3302.1 of Chapter 33 of the New York City Building Code.

This local law will not take effect until three (3) years after it becomes law. Further, it will apply to any permit issued or renewed on or after such date.

A full copy of Intro. No. 2263, along with a summary of the amendments, can be found [here](#).

Intro. No. 2276: Requiring DOB Licensed Construction Superintendents on Major Construction Sites – Expanding the Requirement to Include Buildings Between Seven through Nine Stories:

This piece of legislation attempts to build upon the efforts of the Construction Safety Compliance Unit at the DOB, which has led to a decrease in construction-related injuries and fatalities throughout the industry, as well as the implementation of Local Law 196 in 2017. This change would require DOB licensed Construction Superintendents to serve full-time alongside the Site Safety Coordinators or Site Safety Managers at any major construction projects (i.e., projects starting seven stories and above). This would further require the permit holder to submit a statement to the DOB attesting to the site safety plan and its compliance with the applicable requirements prior to the commencement of any work. Thereafter, the Construction Superintendent would assume responsibility for site safety

and overall management of the project. This would further limit the number of non-major construction projects that a Construction Superintendent may be designated. This means that there will be a dedicated Construction Superintendent at all non-major construction projects by 2026. Specifically, by 2026, no individual will be permitted to be designated as the primary Construction Superintendent for more than one job.

Intro. No. 2276 amends the following local laws: Section 3301.13, Section 3301.13.1, Section 3301.13.2, Section 3301.13.3 of Chapter 33 of the New York City Building Code; Section 3301.13.6 through Section 3301.13.13 of Chapter 33 of the New York City Building Code; Section 3301.13.16 of the New York City Building Code; Section BC 3301.13 of Chapter 33 of the New York City Building Code; Section 3310.5 of Chapter 33 of the New York City Building Code; Section 3310.8 of Chapter 33 of the New York City Building Code; Section 3310.8 of Chapter 33 of the New York City Building Code; Section 3310.8.1 of Chapter 33 of the New York City Building Code; Section 3310.8.2 of Chapter 33 of the New York City Building Code; Section 3310.8.4 of Chapter 33 of the New York City Building Code. Further, Intro. No. 2276 repeals and replaces Section 3310.8.3 of the New York City Building Code and repeals Section 3310.8.6 of the New York City Building Code.

This bill would take effect on January 1, 2022. Further, it will apply to any permits issued or renewed on or after January 1, 2022.

A full copy of Intro. No. 2276, along with a summary of the amendments, can be found [here](#).

Intro. No. 2264: Strengthening Requirements for Cold-Formed Steel Construction:

This bill would amend the existing requirements, as well as creating new safety requirements, for the use of cold-form steel construction. Specifically, this would create additional requirements for special inspectors, construction superintendents, design professionals, and permit holders, who are performing cold-formed steel light-frame construction work in New York City. This aims to prevent the overload and improper installation of cold-formed steel.

Intro. No. 2264 amends the following local laws: Table 1704.3.4 of Chapter 17 of the New York City Building Code and Section BC 3305 of Chapter 33 of the New York City Building Code.

This legislation would become effective 120 days after it becomes law. Moreover, the legislation would not apply to applications for the approval of construction documents that were filed before the effective date. However, the bill would apply to any permits issued prior to the effective date upon renewal.

A full copy of Intro. No. 2264, along with a summary of the amendments, can be found [here](#).

Intro. No. 2262: Banning Stand-Off Brackets:

This legislation would amend the New York City Building Code so that a final inspection of temporary construction equipment permits would not be required. Further, this legislation would prohibit the use of stand-off brackets for C-hook suspended scaffold installations. The enactment of this legislation would make the prohibition that was outlined in the 2019 Buildings Bulletin permanent. A copy of the Buildings Bulletin 2019-006 can be found [here](#).

Intro. No. 2262 amends the following local laws: Section 28-116.2.4.2 of the Administrative Code of the City of New York; Section BC 3302.1 of Chapter 33 of the New York City Building Code; and Section BC 3314.10 of Chapter 33 of the New York City Building Code.

This legislation would become effective immediately. Further, this legislation would apply to any stand-off brackets installed or in use on or after such effective date.

A full copy of Intro. No. 2262, along with a summary of the amendments, can be found [here](#).

CONSTRUCTION CODE REVISIONS

For the first time since 2014, there are proposed comprehensive updates to the current Administrative, Plumbing, Building, Mechanical, and Gas Codes. These revisions were drafted by various committees made up of technical experts, including, but not limited to, engineers, architects, attorneys, planners, tradespeople, representatives of the construction industry, labor, representatives of the real estate industry, utility companies, and DOB and interagency stakeholders.

In total, there are 627 new (or expanded) revisions to the existing codes along with thousands of minor changes. This update strives to align the New York City Construction Codes with national safety standards and technical advancements since the last revision cycle. Once enacted, the various changes and revisions to the New York City Construction Codes would go into effect the following year. To assist in the transition period, the DOB intends to conduct training and outreach regarding the comprehensive updates once implemented.

Emergency Response Enhancements

The proposed code revision would increase the minimum required dimensions of the elevator emergency hatch. It would further permit the use of batteries as the required secondary power source for the Fire Department of New York's (the "FDNY") endorsed Auxiliary Radio Communication System. The revision would also expand the number of high-rise residential buildings that require

emergency voice communication systems.

Fire Protection Enhancements

The proposed code revision would mandate that whenever an exit discharges directly outside and not through a protected area or vestibule, that the FDNY be provided access to the exit stairway either from the protected area or within a minimum distance of it.

Vertical Transportation and Accessibility Enhancements

The proposed code revision would establish clear compliance criteria for elevator systems to ensure greater accessibility and usability for building occupants with physical, intellectual, and/or developmental disabilities. It would also require door locking monitoring in all Limited Use/Limited Application lifts, to minimize the risk of people and objects becoming caught.

Elevator Safety Enhancements

The proposed code revision would require the same elevator-in-readiness to serve all floors to reduce building evacuation times in the event of an emergency. It would further amend inspection timeframes for elevators and boilers to bring them back into service faster.

Protecting Tenants, Streamlining Building Occupancy, and Promoting Increased Affordable Housing

The proposed code revision would require a new special inspection for buildings that are undergoing construction to ensure the protection of tenants. The revision would also clarify the construction documentation is required to receive a new Certificate of Occupancy. Further, it would reduce the required basement clearance height, which is currently eight feet for two-family homes, to seven feet to increase affordable housing opportunities.

Construction Safety Enhancements

The proposed code revision would permit the use of netting, low barriers, and chain link fencing in lieu of requiring solid fencing which creates blind tunnels for pedestrians. Further, the revision would create a new license type for advanced crane technology, such as articulating boom cranes and roto-telehandlers, to ensure that these cranes are being operated safely. Further, the revision improves the safety and consistency of the underpinning of existing buildings.

Building System Construction and Inspection Enhancements

The proposed code revision would require smoke tests for special gas vents to ensure the safety of building occupants. The revision would further require all pipes, tubings, and fittings in a mechanical system to comply with the applicable referenced safety standard. The revision would further codify maintenance, condition assessment, and reporting requirements for parking structures.

Sustainability and Resiliency Enhancements

The proposed Code expands the applicability of flood zone requirements of the 100-year flood hazard area to all critical facilities (including fire, rescue, ambulance, police stations, and designated emergency shelters) that are presently located in the 500-year flood zone. Further, the revision mandates annual visual inspections of dry floodproofing systems and triennial full-scale deployment of dry floodproofing in the presence of a special inspection agency. The revision also permits and supports the use of alternative energy production processes, including hydrogen fuel cells. Further, the revision increases the material choices available to builders by expanding the use of sustainable building materials such as cross-laminated timber and structural composite lumber.

[1] DOB Announces New Construction Safety Legislation & Sweeping Construction Code Revisions, N.Y.C. Bldgs. (Apr. 22, 2021), <https://www1.nyc.gov/site/buildings/about/pr-cons-safety-bill-and-code-revisions.page>.

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