

NYStretch Energy Code—2020, v1.0 Adoption Guide



NYSERDA



1. Introduction

The New York State Energy Conservation Construction Code (State Energy Code) establishes energy conservation standards for the design and construction of all public and private buildings in the State. The State Energy Code is adopted by the State Fire Prevention and Building Code Council (Code Council) pursuant to Article 11 of the Energy Law and is applicable across the State. However, Article 11 of the Energy Law authorizes municipalities to adopt local energy conservation construction codes (Local Energy Codes) that are more stringent than the State Energy Code.

The New York State Energy Research and Development Authority (NYSERDA) developed a publication entitled [NYStretch Energy Code – 2020, Version 1.0](#) (NYStretch) that modifies certain provisions of the 2018 International Energy Conservation Code and ASHRAE 90.1-2016, which if adopted, are deemed to modify the State Energy Code in the same way. NYSEDA designed NYStretch to allow a municipality to adopt a Local Energy Code that is the State Energy Code as modified by NYStretch (a Local Energy Code that is the State Energy Code as modified by NYStretch, is hereinafter referred to as a NYStretch Local Energy Code). Cost and savings analyses commissioned by NYSEDA demonstrate that a NYStretch Local Energy Code improves efficiency by 10 to 12% as compared to the State Energy Code alone.

This Adoption Guide provides an overview of the New York State law relevant to adopting Local Energy Codes and includes a sample model resolution and local law that municipalities can use, in consultation with the municipality’s attorney, for preparing to adopt a NYStretch Local Energy Code. The municipality’s attorney should work with building department staff when adopting a NYStretch Local Energy Code. This Adoption Guide is provided for reference and example purposes only and does not constitute legal advice. Any municipality considering NYStretch Local Energy Code adoption should consult with its attorney for legal advice.

2. NYSEDA Support

Upon request, NYSEDA staff or [Regional NYStretch Circuit Riders](#) can provide support to communities or community groups interested in adopting NYStretch Local Energy Code. This can include presentations to planning committees, elected officials or at public hearings, and assistance with preparing proposed local laws. Contact codes@nyseda.ny.gov for more information.

3. Adopting NYStretch

To understand how NYStretch works, it is important to know how the State Energy Code works. The State Energy Code is a regulation that is adopted by the Code Council and found in Part 1240 of Title 19 of the New York Codes, Rules, and Regulations (NYCRR) and in the publications that are incorporated by reference in Part 1240. Currently, those primary publications include the 2020 edition of the Energy Conservation Construction Code of New York State (the 2020 ECCCNY) and the 2016 edition of the Energy Standard for Buildings Except Low-Rise Residential Buildings (ASHRAE 90.1-2016). Part 1240 includes Section 1240.3 that makes changes to certain provisions in ASHRAE 90.1-2016. As a result, the State Energy Code consists of the 2020 ECCCNY and ASHRAE 90.1-2016, as modified by Section 1240.3.¹

The 2020 ECCCNY has two main parts: the 2020 ECCCNY Commercial Provisions (which are applicable to commercial buildings) and the 2020 ECCCNY Residential Provisions (which are applicable to residential buildings).² In general, all commercial buildings must comply with the 2020 ECCCNY Commercial Provisions and all residential buildings must comply with the 2020 ECCCNY Residential Provisions. However, the 2020 ECCCNY Commercial Provisions provide that in certain cases, the owner of a commercial building may choose to comply with ASHRAE 90.1-2016 (as modified by Section 1240.3) rather than the 2020 ECCCNY Commercial Provisions.

NYStretch is deemed to make changes to the 2020 ECCCNY and additional changes to ASHRAE 90.1-2016. More specifically, Part 1 of NYStretch makes changes to the 2020 ECCCNY Commercial Provisions, Part 2 of NYStretch makes changes to ASHRAE 90.1-2016, and Part 3 of NYStretch makes changes to the 2020 ECCCNY Residential Provisions. Provisions in the 2020 ECCCNY and ASHRAE 90.1-2016 that are unmodified by NYStretch remain in effect.

¹Certain other publications (or referenced standards) are identified and incorporated by reference in 19 NYCRR Part 1240. Those referenced standards are also parts of the State Energy Code.

²The terms “residential buildings” and “commercial buildings” are defined in 19 NYCRR Part 1240.

A municipality can adopt a NYStretch Local Energy Code by adopting a local law that provides, in effect, that:

1. the Local Energy Code in the municipality will be the State Energy Code as modified by NYStretch
2. commercial buildings must comply with the 2020 ECCCNY Commercial Provisions as modified by Part 1 of NYStretch (or, where permitted by the 2020 ECCCNY Commercial Provisions as modified by Part 1 of NYStretch, with ASHRAE 90.1-2016 as modified by Section 1240.3 and further modified by Part 2 of NYStretch)
3. residential buildings must comply with the 2020 ECCCNY Residential Provisions as modified by Part 3 of NYStretch

It is strongly recommended that the local law include the actual text of Parts 1, 2, and 3 of NYStretch, and not simply refer to those provisions or incorporate those provisions by reference.

The steps to adopt a local law that establishes a NYStretch Local Energy Code in a municipality are the same as any other local law, including adherence to the procedures detailed in Article 3 of the Municipal Home Rule Law and the requirements of the State Environmental Quality Review Act (SEQRA). For detailed instructions on adopting a local law, the New York State Department of State (DOS) provides a useful guidance document, entitled Adopting Local Laws in NY State, available at: <https://dos.ny.gov/system/files/documents/2022/07/adopting-local-laws-in-nys.pdf>.

While this Adoption Guide focuses on using a local law to adopt a NYStretch Local Energy Code, certain municipalities may wish to use an ordinance. Any municipality wishing to adopt a NYStretch Local Energy Code (or any other Local Energy Code) should consult with the municipality's attorney for legal advice regarding the appropriate type of legislation to use, drafting such legislation, and all steps required to adopt such legislation.

4. Filing a Copy of the NYStretch Local Energy Code with the Code Council

Any municipality that adopts a NYStretch Local Energy Code (or any other Local Energy Code), whether by adopting a local law or ordinance, must comply with all laws applicable to adopting a local law or ordinance and must also comply with the requirements of Section 11-109 of the Energy Law. Specifically, the municipality must file a copy of its Local Energy Code with the Code Council.

The Code Council is legally located within the Department of State. A copy of the Local Energy Code must be filed with the Code Council by submission through the Department of State's Division of Building Standards and Codes (DBSC). DBSC developed a form ([Filing to the State Fire Prevention and Building Code Council of More Stringent Local Energy Conservation Construction Code](#)) that can be used to file a copy of a Local Energy Code with the Code Council pursuant to Section 11-109 of the Energy Law. The form is available at [Filing to the State Fire Prevention and Building Code Council of More Stringent Local Energy Conservation Construction Code](#) and included in Appendix B of this document.

It is important to note that the filing required by Section 11-109 of the Energy Law is in addition to other filing(s) required by other applicable law(s). For example, if a municipality adopts a Local Energy Code by adopting a local law, the municipality must file that local law with the Department of State's State Records Unit, pursuant to the Municipal Home Rule Law (see Appendix D of this document). In addition, the municipality must file a copy of that local law with the Code Council. Filing a copy of the local law with the Department of State's State Records Unit pursuant to the Municipal Home Rule Law does not satisfy the requirement of filing the Local Energy Code with the Code Council pursuant to Section 11-109 of the Energy Law.

The [Filing to the State Fire Prevention and Building Code Council of More Stringent Local Energy Conservation Construction Code](#) form strongly recommends that the following documentation be provided to DBSC:

1. a complete copy of the Local Energy Code
2. a detailed description of the Local Energy Code
3. a detailed description of the provisions in the State Energy Code that are changed by the Local Energy Code and of the provisions not contained in the State Energy Code that are added by the Local Energy Code
4. a detailed description of the reasons why the municipality believes the provisions of the Local Energy Code are more restrictive than the State Energy Code

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Where a municipality adopts a NYStretch Local Energy Code that makes all the changes described in NYStretch **and no other changes**, the municipality should consider providing the following in its [Filing to the State Fire Prevention and Building Code Council of More Stringent Local Energy Conservation Construction Code](#) form (NYSERDA offers resources to support this):

- As a description of the municipality’s NYStretch Local Energy Code and the provisions in the State Energy Code that have been changed by the NYStretch Local Energy Code, and of the provisions not contained in the State Energy Code that have been added by the NYStretch Local Energy Code, a statement substantially similar to the following: “The Municipality’s Local Energy Code is the State Energy Code as modified by NYStretch Energy Code—Version 1.0. All changes described in NYStretch 1.0 have been made, and no other changes have been made.”
- As the description of the reasons why the municipality believes the provisions of the NYStretch Local Energy Code are more restrictive than the State Energy Code: (1) a statement referring to the cost-effectiveness analysis provided by NYSEDA demonstrating that the State Energy Code, as modified by NYStretch Version 1.0, is more stringent than the State Energy Code; and (2) copies of that analysis.

Where a municipality adopts a NYStretch Local Energy Code **that makes changes to NYStretch**, the municipality should consider providing the following in its [Filing to the State Fire Prevention and Building Code Council of More Stringent Local Energy Conservation Construction Code](#) form (NYSERDA offers resources to support this):

- As a description of the municipality’s NYStretch Local Energy Code and the provisions in the State Energy Code that have been changed by the NYStretch Local Energy Code, and of the provisions not contained in the State Energy Code that have been added by the NYStretch Local Energy Code, a statement substantially similar to the following: “The Municipality’s Local Energy Code is the State Energy Code as modified by NYStretch Energy Code—Version 1.0. All changes described in NYStretch 1.0 have been made with the following exceptions: [the municipality lists the exceptions].”
- As the description of the reasons why the municipality believes the provisions of the NYStretch Local Energy Code are more restrictive than the State Energy Code: (1) a statement referring to the cost-effectiveness analysis provided by NYSEDA demonstrating that the State Energy Code, as modified by NYStretch Version 1.0, is more stringent than the State Energy Code; (2) copies of that analysis; and (3) a detailed description of why the municipality believes any provisions in its NYStretch Local Energy Code that reflect changes to NYStretch are more restrictive than the State Energy Code.

All information, content, and materials are for general informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any legal matter. You should not act or refrain from acting based on information provided herein without first seeking legal advice. Use of, and access to this information does not create an attorney-client relationship between the reader or user and the authors. All liability with respect to actions taken or not taken based on the contents provided herein are hereby expressly disclaimed.

As described in Section 11-109 of the Energy Law, if the municipality files a copy of its Local Energy Code with the DBSC in the manner described above **within 30 days of promulgation or adoption**, the municipality may enforce its Local Energy Code on the date it becomes effective and may continue to do so until and unless the Code Council determines that the municipality's Local Energy Code is not more stringent than the State Energy Code. If the municipality files a copy of its Local Energy Code with the Code Council **more than 30 days of promulgation or adoption**, the municipality cannot enforce its Local Energy Code until and unless the Code Council determines the municipality's Local Energy Code is more stringent than the State Energy Code.

5. Uniform Code and Conflicts with NYStretch

The New York State Fire Prevention and Building Code (Uniform Code) is a fire prevention and building code adopted by the Code Council pursuant to Article 18 of the Executive Law. The Uniform Code is applicable in all parts of the State except New York City, which has its own construction code.

A change made by NYStretch—Part 3.11, addition of new section R403.6.2 Balanced and HRV/ERV systems (Mandatory)—is a standard for construction that conflicts with the corresponding standard for construction in the Uniform Code. Specifically, the 2020 Residential Code of New York State, Section M1505.4.1. NYStretch, Section R403.6.2 requires the use of an HRV or ERV system in Climate Zones 5 and 6, and any balanced ventilation solution in Climate Zone 4, to satisfy mechanical ventilation requirements in new construction. However, the 2020 Residential Code of New York State, Section M1505.4.1, allows for ventilation to be provided using either exhaust only, supply only, or a balanced combination of the two.

This is significant because Article 18 of the Executive Law provides that the provisions of the Uniform Code supersede any other provision of a general, special or local law, ordinance, administrative code, rule or regulation that is inconsistent or in conflict with the Uniform Code. Therefore, any provision in a NYStretch Local Energy Code that is inconsistent or in conflict with any provision in the Uniform Code will be superseded by the provision in the Uniform Code.

Article 18 of the Executive Law authorizes a local government (county, city, town, or village) to adopt a standard for construction that is higher or more restrictive than the corresponding provision of the Uniform Code. However, a local government that adopts such a higher or more restrictive local standard (MRLS) for construction must notify the Code Council that it has done so and petition the Code Council for an affirmative determination that the local standard is, in fact, more restrictive than the Uniform Code. In addition, the local government must demonstrate, and the Code Council must find, that the MRLS is reasonably necessary because of special conditions prevailing within the local government.³ The notice and petition must be filed by the appropriate local government official and must be filed within 30 days of adoption of the MRLS by the local government. The local government cannot enforce the MRLS until and unless the Code Council approves or adopts the MRLS.

Any municipality that adopts a NYStretch Local Energy Code should consider, in consultation with the municipality's attorney and building department, whether the municipality should follow the procedures in Article 18 of the Executive Law relating to submitting a petition for approval of the MRLS for any provision(s) in the NYStretch Local Energy Code that the municipality identifies as potentially being inconsistent or in conflict with the Uniform Code, such as Section R403.6.2.

See Executive Law section 379 and DBSC's website at <https://dos.ny.gov/state-fire-prevention-and-building-code-council#more-restrictive-local-standards> for additional information. See also Appendix C of this document.

If a municipality elects not to follow the procedures in Article 18 of the Executive Law described above, then municipalities may elect to adopt a NYStretch Local Energy Code and omit Section R403.6.2 from that adoption. In doing so, the municipality will still retain eligibility to complete the Clean Energy Communities Leadership Round, NYStretch Energy Code High Impact Action.

³ The Code Council must also find that the MRLS conforms with accepted engineering and fire prevention practices and the purposes of Article 18.

6. Appendices

- A. Sample Model Resolution and Local Law: An example of a local law to be adopted by a municipality to establish the State Energy Code, as modified by NYStretch Version 1.0, as the municipality’s Local Energy Code. This model local law should be considered in consultation with the municipality’s attorney and should be revised as necessary to meet the specific needs and circumstances of the municipality.

- B. Required DOS Form: Filing to the State Fire Prevention and Building Code Council of More Stringent Local Energy Conservation Construction Code. A form-fillable pdf with instructions for filing the necessary document is available at: <https://dos.ny.gov/system/files/documents/2022/05/2094-f.pdf>.

- C. Notice and Petition Relating to More Restrictive Construction Standards (Uniform Code – Executive Law §379). Also available at: https://dos.ny.gov/system/files/documents/2019/12/notice_and_petition_379.pdf.

- D. Local Law Filing Form: The form prescribed by the Department of State’s State Records Unit for filing a local law with that Unit pursuant to the Municipal Home Rule Law. Also available at: <https://dos.ny.gov/system/files/documents/2021/06/0239-f-l.pdf>.

Appendix A. Sample Model Resolution and Local Law

Jurisdiction Name: City/Town/Village/County, NY

[Municipal Governing Body] [Resolution Reference Number]

Resolution to Adopt Amendments to Article [# pertaining to e.g., Building Code, Building Energy Code, Energy Conservation, etc.] [or “to Add provisions for a local energy code under Article #”] of the [Municipal] Code

Information

Department:

[MUNICIPALITY] Attorney

Sponsors:

[Chief Executive of Municipality]

Category:

Local Laws

Functions:

None

Financial Impact

None.

Body

WHEREAS, to prevent a statewide patchwork of stricter energy codes, the New York State Energy Research and Development Authority (NYSERDA) developed the NYStretch Energy Code–2020 (NYStretch);

WHEREAS, a stretch energy code is simply more stringent than the minimum base energy code that can be voluntarily adopted by local jurisdictions. NYStretch is a model stretch code that is 10 to 12% more efficient than the minimum requirements of the 2020 Energy Conservation Construction Code of New York State (2020 ECCCNY);

WHEREAS, some New York State municipalities have adopted stricter energy standards to ensure reduced energy costs for residents and businesses;

WHEREAS, under NY Energy Law § 11-109, the [Municipality] of [Name of Municipality] is authorized to adopt a local energy code more stringent than the 2020 ECCCNY;

WHEREAS, [additional clauses entered by municipality as deemed necessary regarding introduction of NYStretch];

[next page]

WHEREAS, the [Municipal Governing Body] is considering [either “**amending provisions of Article #** [pertaining to e.g., Building Code, Building Energy Code, Energy Conservation Code, etc.]” or “**to add provisions for a local energy code under Article #**”] of the [Municipality] Code;

WHEREAS, a public hearing was held on [DATE], at which time all persons either for or against said amendments were heard;

WHEREAS, the [Municipal Governing Body] has determined that the proposed legislative action is an “Unlisted” action pursuant to Article 8 of the Environmental Conservation Law of the State of New York, and the regulations promulgated thereunder at 6 NYCRR 617 (collectively, “SEQRA”);

WHEREAS, the [Municipal Governing Body], as Lead Agency, has completed the SEQRA process which has resulted in a [Negative Declaration /or/ Final EIS and Findings Statement] dated _____;

RESOLVED, that Local Law No. [#] of [YEAR] is hereby adopted as follows: LOCAL LAW NO. [#] OF [YEAR]

A LOCAL LAW [either “**amending provisions of Article #** [pertaining to e.g., Building Code, Building Energy Code, Energy Conservation, etc.]” or “**adding provisions for a local energy code under Article #**”] of the [Municipality] Code;

BE IT ENACTED by the [Municipal Governing Body] of [Municipality] as follows:

Section 1. Recitals and Legislative Intent

The New York State Energy Conservation Construction Code (hereinafter referred to as the “State Energy Code”) is adopted by the State Fire Prevention and Building Code Council (hereinafter referred to as the “Code Council”) pursuant to Article 11 of the Energy Law.

The State Energy Code includes the provisions contained in Part 1240 of Title 19 of the New York Codes, Rules and Regulations (hereinafter referred to as “Part 1240”) and the publications incorporated by reference in Part 1240.

The publications currently incorporated by reference in Part 1240 include, but are not limited to, the 2020 edition of the Energy Conservation Construction Code of New York State (hereinafter referred to as the “2020 ECCCNY”) and the 2016 edition of ASHRAE 90.1 (hereinafter referred to as “ASHRAE 90.1-2016”).

The 2020 ECCCNY is based on the 2018 edition of a publication entitled International Energy Conservation Code (hereinafter referred to as the “2018 IECC”).

[next page]

The New York State Energy Research and Development Authority (hereinafter referred to as NYSERDA) has issued a publication entitled NYStretch Energy Code 2020, Version 1.0, dated July 2019 (hereinafter referred to as NYStretch). NYStretch modifies (i.e., amends, replaces, replaces and renames, or adds to) certain sections, certain tables, and a certain appendix in the 2018 IECC; adds certain sections, certain tables, and certain appendices to the 2018 IECC; modifies (i.e., adds to, amends, or replaces) certain sections and certain tables in ASHRAE 90.1-2016; and adds certain new sections to ASHRAE 90.1-2016.

Studies commissioned by NYSERDA indicate that modifying the State Energy Code in the manner contemplated by NYStretch can result in significant savings in energy usage and energy costs.

Article 11 of the Energy Law authorizes municipalities to adopt local energy conservation construction codes that are more stringent than the State Energy Code.

The [City / Town / Village / County] of _____ desires to adopt as its local energy conservation construction code the State Energy Code as modified in the manner contemplated by NYStretch.

Section 2. Adoption of Local Energy Conservation Construction Code

The [City / Town / Village / County] of _____ hereby adopts, as its local energy conservation construction code, the State Energy Code as modified in the manner contemplated by NYStretch. Such local energy conservation construction code shall consist of the provisions currently set forth in Part 1240 and in the publications currently incorporated by reference in Part 1240; provided, however, that the 2020 ECCCNY and ASHRAE 90.1-2016 shall be deemed to be modified as follows:

- (a) in each case where a section, table, or appendix in the 2018 IECC is modified by NYStretch, the corresponding section, table, or appendix in the 2020 ECCCNY shall be deemed to be modified in the same manner [subject to the following exception:
 - (i) the modification made by NYStretch to [section / table / appendix] ____ of the 2018 IECC shall not be deemed to be made to the corresponding [section / table / appendix] in the 2020 ECCCNY];
- (b) in each case where a section, table, or appendix is added to the 2018 IECC by NYStretch, such section, table, or appendix shall be deemed to be added to the 2020 ECCCNY [subject to the following exception:
 - (i) [section / table / appendix] ____ added to the 2018 IECC by NYStretch shall not be deemed to be added to the 2020 ECCCNY];

- (c) each section or table in ASHRAE 90.1-2016 that is modified by NYStretch shall be deemed to be so modified [subject to the following exception:
- (i) the modification made by NYStretch to [section / table] ____ of ASHRAE 90.1-2016 shall not be deemed to be made to ASHRAE 90.1-2016]; and
- (d) each section added to ASHRAE 90.1-2016 by NYStretch shall be deemed to be added to ASHRAE 90.1-2016 [subject to the following exception:
- (i) section ____ added to ASHRAE 90.1-2016 by NYStretch shall not be deemed to be added to ASHRAE 90.1-2016].

A copy of NYStretch is annexed hereto and made part hereof.

Section 3. Applicability

The local energy conservation construction code, as hereby adopted, shall be applicable to all buildings constructed, substantially renovated, or altered in the [City / Town / Village / County] of _____ on or after the effective date of this local law and to all additions to buildings in the [City / Town / Village] of _____ made on or after the effective date of this local law. However, pursuant to Energy Law § 11-109(2):

- (a) if a copy of this local law is filed with the New York State Department of State, Division of Building Standards and Codes, as Secretariat for the Code Council, within 30 days after adoption of this local law, and if the Code Council shall subsequently determine that the local energy conservation construction code as hereby adopted is not more restrictive than the State Energy Code, then on and after the date of such determination the local energy conservation construction code as hereby adopted shall no longer be enforced and the State Energy Code shall be applicable and shall be enforced in the [City / Town / Village / County] of _____; and
- (b) if a copy of this local law is not filed with the New York State Department of State, Division of Building Standards and Codes, as Secretariat for the Code Council, within 30 days after adoption of this local law, then the local energy conservation construction code as hereby adopted shall not be enforceable until and unless the Code Council shall determine that such local energy conservation construction code is more restrictive than the State Energy Code, and until and unless the Code Council shall make such determination the State Energy Code shall be applicable and shall be enforced in the [City / Town / Village County] of _____.

[next page]

Section 4. Severability

If any section, subsection, subdivision, paragraph, clause or phrase in this local law, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this local law, or any part thereof. The [City or Common Council/Town Board/Village Board] hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this local law, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases may be declared invalid or unconstitutional.

Section 5. Authority

This local law is adopted pursuant to Energy Law § 11-109(1) and Municipal Home Rule Law § 10.

Section 6. Effective Date

This local law shall take effect upon filing with the Secretary of State pursuant to the Municipal Home Rule Law.



Appendix B. Required DOS Form—Filing to the State Fire Prevention and Building Code Council of More Stringent Local Energy Conservation Construction Code



Building Standards and Codes

Department of State
 Division of Building Standards and Codes
 One Commerce Plaza
 99 Washington Avenue, Suite 1160
 Albany, NY 12231-0001
 Phone: (518) 474-4073
 Fax: (518) 486-4487
 www.dos.ny.gov

Filing to the State Fire Prevention & Building Code Council of More Stringent Local Energy Conservation Construction Code (Energy Code – Energy Law § 11-109)

INSTRUCTIONS TO FILER:

Complete this form to file a more stringent local energy conservation construction code than the State Energy Conservation Construction Code (“Energy Code”) with the State Fire Prevention & Building Code Council (“Code Council”) pursuant to Energy Law §11-109.

Please note that if the filing is submitted within thirty (30) days of the promulgation or adoption of the local code or amendments or revision thereof, then the Municipality may enforce such local code, amendment, or revision until and unless the Code Council determines that such local code, amendment, or revision is not more restrictive than the Energy Code. **If the filing is not submitted within such thirty (30) day time period, then the Municipality may not enforce such local code, amendment, or revision until and unless the Code Council determines that such local code, amendment, or revision is more restrictive than the Energy Code.¹**

MUNICIPALITY INFORMATION:

This Filing relates to a local energy conservation construction code, or any amendment or revision thereof, promulgated or adopted by the following Municipality²: _____

FILER INFORMATION:

This Filing is submitted by the Filer named below (the “Filer”):

- Filer is the Chief Executive Officer of the Municipality.
- The Municipality has no Chief Executive Officer. Filer is the Chairperson of the Legislative Body of the Municipality.
- Other (specify): _____

Name of Filer: _____

Title of Filer: Mayor Supervisor Chairperson of Legislative Body
 Other (specify) _____

Address: _____

Telephone Number: _____ Fax Number: _____ Email Address: _____
 (____) ____-____ (____) ____-____ _____

¹ See Energy Law §11-109(2).

² A “municipality” is a county, city, town, village, school district, or district corporation. See Energy Law §11-102(12).



LOCAL ENERGY CONSERVATION CONSTRUCTION CODE INFORMATION:

This Filing relates to the Municipality’s local energy conservation construction code, or any amendments or revisions thereof, entitled: _____.

A true and complete copy of the local energy conservation construction code, or any amendments or revisions thereof, is included herewith and labeled **Exhibit A**.

Date of promulgation or adoption of the Municipality’s local energy conservation construction code, or any amendments or revisions thereof: _____.

ADDITIONAL DOCUMENTATION:

List here any additional documentation. The Department of State strongly recommends that the Municipality provide a detailed description of (1) the local energy conservation construction code promulgated or adopted by the Municipality, or any amendments or revisions thereof; (2) the corresponding provisions imposed by the Energy Code; and (3) the reasons why the Municipality believes the provisions of the local energy conservation construction code promulgated or adopted by the Municipality, or any amendments or revisions thereof, are higher or more restrictive than the Energy Code. However, do not fail to file a copy of the local energy conservation construction code, or any amendment or revision thereof, within thirty (30) days after promulgation or adoption of such local energy code, or any amendment or revision thereof.³

Exhibit B _____ (document name)

Exhibit C _____ (document name)

Exhibit D _____ (document name)

Dated: _____

Signature of Filer

Print or Type Name and Title of Filer

Please submit this Filing form, all exhibits, and any additional documentation to:

Assistant Director for Code Development
NYS Department of State, Division of Building Standards and Codes
99 Washington Ave., Suite 1160
Albany, New York 12231

Or by email to: Dos.sm.codes.codedevelopment@dos.ny.gov.

When submitting petitions via email, type “[Local Energy Code](#).” in the subject line followed by the name of the Municipality and the Local Law # or Ordinance #. (Example: [Local Energy Code: Town of Anywhere, Local Law #6 of 2017](#)). **Electronic submissions are strongly encouraged.**

If you have questions concerning submission requirements, please call the Code Development Unit at (518) 474-4073, option 3, e-mail at Dos.sm.codes.codedevelopment@dos.ny.gov or fax at (518) 486-4487.

³ Please consult with the Municipality’s attorney when submitting a Filing more than thirty (30) days after promulgation or adoption of the local energy conservation construction code, or any amendment or revision thereof.



Appendix C. Notice and Petition Relating to More Restrictive Construction Standards



Building Standards and Codes

New York State
 Department of State
 Division of Building Standards
 and Codes
 One Commerce Plaza
 99 Washington Avenue, Suite 1160
 Albany, NY 12231-0001
 Phone: (518) 474-4073
 Fax: (518) 486-4487
 www.dos.ny.gov

Notice and Petition Relating to More Restrictive Construction Standards (Uniform Code – Executive Law § 379)

INSTRUCTIONS TO PETITIONER:

Complete this Notice and Petition in its entirety and submit as indicated in PART 6. All "Exhibits" required in PART 4 must be included and correctly labeled.

PART 1: MUNICIPALITY INFORMATION:

This Notice and Petition relates to a Local Law or Ordinance enacted or adopted by the following local government or county (the "Municipality"):

City Town Village of _____ or County of Nassau.

Address: _____

PART 2: LOCAL LAW OR ORDINANCE INFORMATION:

This Notice and Petition relates the Municipality's: Local Law Ordinance No. _____ of 20____.

Date of enactment or adoption of the Local Law or Ordinance by Legislative Body: _____.

Local Law only: Date of filing of Local Law pursuant to Municipal Home Rule Law: _____.¹

PART 3: PETITIONER INFORMATION:

This Notice and Petition is filed by the Petitioner named below (the "Petitioner").

Petitioner is the Chief Executive Officer of the Municipality.

The Municipality has no Chief Executive Officer. Petitioner is the Chairperson of the Legislative Body.²

Name of Petitioner: _____

Title of Petitioner: Mayor Supervisor Chairperson of Legislative Body

Other (specify) _____

Telephone Number: _____ Fax Number: _____ Email Address: _____
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¹ Executive Law § 379(1) provides that the Notice and Petition relating to a local law or ordinance that imposes more restrictive standards for construction must be submitted within thirty days of such enactment or adoption by the Legislative Body. Please note that the thirty-day time period begins on the date of enactment or adoption by the Legislative Body, and not on (1) the date the local law or ordinance is approved by the Chief Executive Officer, or (2) the effective date of the local law or ordinance, or (3) the date on which the local law is filed with the Department of State's Division of Corporations, State Records, and Uniform Code pursuant to the Municipal Home Rule Law. Please note also that the Code Council may deny a request to adopt (approve) a more restrictive construction standard if the Notice and Petition is untimely. Please consult with the Municipality's attorney before submitting a Notice and Petition more than thirty (30) days after enactment or adoption of the local law or ordinance by the Legislative Body.

² Executive Law § 379(1) provides that "(w)ithin thirty days of such enactment or adoption, the chief executive officer, or if there be none, the chairman of the legislative body of such local government, shall so notify the council, and shall petition the council for a determination of whether such local laws or ordinances are more stringent than the standards for construction applicable generally to such local government in the uniform code." The Code Council may deny a request to adopt (approve) a more restrictive construction standard if the Notice and Petition is not submitted by the chief executive officer of the Municipality (or, if there is no chief executive officer, by Chair of the Legislative Body of the Municipality).

PART 4: NOTICE AND PETITION:

TO: The State Fire Prevention and Building Code Council (the “Code Council”)
c/o New York State Department of State, Division of Building Standards and Codes

Notice of Enactment or Adoption. Please take notice that the Legislative Body of the Municipality enacted or adopted the Local Law or Ordinance described above (the “Local Law or Ordinance”) on the “date of enactment or adoption” indicated above.

A true and complete copy of the Local Law or Ordinance is included herewith and labeled **Exhibit A.**

Petition for Determination. The undersigned Petitioner hereby petitions the Code Council for a determination that the standards for construction imposed by the Local Law or Ordinance are more stringent than the standards for construction applicable generally to the Municipality in the New York State Uniform Fire Prevention and Building Code (the “Uniform Code”).

A detailed description of (1) the standards for construction imposed by the Local Law or Ordinance; (2) the corresponding standards imposed by the Uniform Code; and (3) the reasons why the Municipality believes the standards for construction imposed by the Local Law or Ordinance are more restrictive than the standards imposed by the Uniform Code is included herewith and labeled **Exhibit B.**

Special Conditions. The undersigned Petitioner hereby requests that the Code Council find that the higher or more restrictive standards for construction imposed by the Local Law or Ordinance are reasonably necessary because of special conditions prevailing within the Municipality.

A detailed description of (1) the special conditions prevailing within the Municipality including documentation verifying its existence and (2) the reasons why the Petitioner and the Municipality believe that such special conditions make the higher or more restrictive standards imposed by the Local Law or Ordinance reasonably necessary is included herewith and labeled **Exhibit C.**³

Conformance with Accepted Practices. The undersigned Petitioner hereby requests that the Code Council find that the standards for construction imposed by the Local Law or Ordinance conform with accepted engineering and fire prevention practices.

A detailed description of the reasons why the Petitioner and the Municipality believe that such standards for construction conform with accepted engineering and fire prevention practices is included herewith and labeled **Exhibit D.**⁴

Conformance with Purposes of Article 18. The undersigned Petitioner hereby requests that the Code Council find that the standards for construction imposed by the Local Law or Ordinance conform with the purposes of Article 18 of the Executive Law.

A detailed description of the reasons why the Petitioner and the Municipality believe that such standards for construction conform with the purposes of Article 18 is included herewith and labeled **Exhibit E.**⁵

³ The Code Council cannot adopt (approve) higher or more restrictive standards for construction enacted or adopted by a municipality unless the Code Council finds that such higher or more restrictive standards are reasonably necessary because of special conditions prevailing within the municipality. See Executive Law § 379(2).

⁴ The Code Council cannot adopt (approve) higher or more restrictive standards enacted or adopted by a municipality unless the Code Council finds that such higher or more restrictive standards conform with accepted engineering and fire prevention practices. See Executive Law § 379(2).

⁵ The Code Council cannot adopt (approve) higher or more restrictive standards enacted or adopted by a municipality unless the Code Council finds that such higher or more restrictive standards conform with the purposes of Article 18 of the Executive Law. See Executive Law § 379(2).



Variance Process.

- The Municipality has established a process whereby an aggrieved party may request a variance from the construction standards imposed by the Local Law or Ordinance. Such process is:
 - included in the following sections or provisions of the Local Law or Ordinance attached as Exhibit A:
 - included in a local law, ordinance, rule, or regulation other than the Local Law or Ordinance attached as Exhibit A, a true and complete copy of such other local law, ordinance, rule, or regulation being included herewith and labeled **Exhibit E**.⁶
- The Municipality has not established a process whereby an aggrieved party may request a variance from the construction standards imposed by the Local Law or Ordinance.

Additional Documentation.

List here all additional documentation submitted in support of this Petition. If more than four additional documents are submitted, attach additional pages to list those additional documents. The Department of State **strongly** recommends that the Municipality provide copies of the minutes and/or transcripts of the meetings or hearings in which the Local Law or Ordinance was discussed and enacted or adopted, particularly if those minutes or transcripts include information relating to the more restrictive nature of the standards imposed by the Local Law or Ordinance, special conditions that make the local standards reasonably necessary, and/or conformance with accepted practices and the purposes of Article 18. However, do not fail to submit this Notice and Petition within 30 days after enactment or adoption of the Local Law or Ordinance by the Legislative Body.

- Exhibit G** _____ (document name)
- Exhibit H** _____ (document name)
- Exhibit I** _____ (document name)
- Exhibit J** _____ (document name)

⁶ The Municipality’s process (if any) for granting a variance from the standards for construction imposed by the Local Law or Ordinance must provide that no variance granted pursuant to such process can reduce any requirement below the level established by the Uniform Code. Neither the Municipality, nor any code enforcement official or other official or employee of the Municipality, nor any variance or appeals board established by the Municipality has the authority to waive, vary, modify or otherwise alter any provision or requirement of Uniform Code. Provisions or requirements of the Uniform Code may be varied or modified only pursuant to procedures established by the Secretary of State pursuant to Section 381(1)(f) of the Executive Law.



Request for Adoption / Approval.

The undersigned Petitioner hereby requests that the Code Council adopt (approve) the standards for construction imposed by the Local Law or Ordinance. The undersigned Petitioner and the Municipality acknowledge that (1) the Code Council has the power to adopt (approve) such standards in whole or in part; to limit the term or duration of such standards, to impose conditions in connection with the adoption thereof, and to terminate such standards at such times, and in such manner as the Code Council may deem necessary, desirable or proper; and (2) the Local Law or Ordinance cannot be enforced until an affirmative determination by the Code Council.

Dated: _____

Signature of Petitioner (Chief Executive Officer of the Municipality or Chairperson of Legislative Body of the Municipality)

Print or Type Name and Title of Petitioner

PART 5: MUNICIPALITY CONTACT PERSON IF OTHER THAN PETITIONER:

Name: _____ Title: _____

Telephone Number: (____)____-____ Email address: _____

PART 6: SUBMISSION INFORMATION:

Please submit this Notice and Petition, all required Exhibits, and any additional documentation the Petitioner and the Municipality wish to submit in support of this Notice and Petition to:

Gerard Hathaway, R.A.
Assistant Director for Code Development
NYS Department of State, Division of Building Standards and Codes
99 Washington Ave., Suite 1160
Albany, New York 12231

Or by email to: Dos.sm.codes.codedevelopment@dos.ny.gov.

When submitting petitions via email, type "**MRLS:**" in the subject line followed by the name of the Municipality and the Local Law # or Ordinance #: (Example: **MRLS: Town of Anywhere, Local Law # 5 of 2017**)

Electronic submissions are strongly encouraged.

Appendix D. Local Law Filing Form (State Records)

Local Law Filing Instructions

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001
www.dos.ny.gov

PLEASE OBSERVE THESE INSTRUCTIONS FOR FILING LOCAL LAWS WITH THE SECRETARY OF STATE

1. Each local law shall be filed with the Secretary of State within 20 days after its final adoption or approval as required by section 27 of the Municipal Home Rule Law. The cited statute provides that a local law shall not become effective before it is filed in the office of the Secretary of State.
 2. Each local law to be filed with the Secretary of State shall be an original certified copy.
 3. Each local law shall be filed on a form provided by the Department of State. If additional pages are required, they must be the same size as the form. Typewritten copies of the text may be attached to the form. Only legible copies will be accepted.
 4. File only the number, title and text of the local law.
 5. In the case of a local law amending a previously enacted local law, the text must be that of the law as amended. Do not include any matter in brackets, with a line through it, italicized or underscored to indicate the changes made. The printed number of the bill and explanatory matter must be omitted.
 6. For the purpose of filing a local law with the Department of State, number each local law consecutively, beginning with the number one for the first local law filed in each calendar year. The next number in sequence should be applied to each local law when it is submitted for filing, regardless of its date of introduction or adoption. The date of filing of a local law is the date on which the local law is placed on file by the Department.
- It is suggested that municipalities use introductory identifying bill numbers for proposed local laws. After the local law is enacted (and approved by the voters, if required), the local law should then be numbered with the next consecutive local law number, as described above, and then submitted to the Department for filing.
7. Each copy of a local law filed with the Secretary of State shall have affixed to it a certification by the Clerk of the County legislative body or the City, Town or Village Clerk or other officer designated by the local legislative body. Certification forms are provided herewith.
 8. A copy of each local law may be mailed or delivered to:

NYS Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231.

(DO NOT FILE THIS INSTRUCTION SHEET WITH THE LOCAL LAW.)



(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ (Name of Legislative Body) on _____, 20____, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ (Name of Legislative Body) on _____, 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) and was deemed duly adopted on _____, 20____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ (Name of Legislative Body) on _____, 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) on _____, 20____.

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____, 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ (Name of Legislative Body) on _____, 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) on _____, 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____, 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.



5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____, 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____, 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ above.

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: _____



NYSERDA

**New York State
Energy Research and
Development Authority**

17 Columbia Circle
Albany, NY 12203-6399

toll free: 866-NYSERDA

local: 518-862-1090

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