



Code Outreach Program – More Restrictive Construction Standards (Uniform Code & Executive Law § 379)

Executive Law §379 authorizes the legislative body of a local government (city, town, or village) to enact or adopt a local law or ordinance that imposes standards for construction that are “higher” or “more restrictive” than the standards imposed by the Uniform Fire Prevention and Building Code (Uniform Code)¹. This edition of the Code Outreach Program will summarize the requirements of Executive Law §379 with a focus on special conditions. Lack of special conditions is a common reason that the State Fire Prevention and Building Code Council (Code Council) may deny a petition.

If the legislative body of a local government enacts or adopts a local law or ordinance pursuant to Executive Law §379, the Chief Executive Officer of the local government (or, if there is no Chief Executive Officer, then the Chairperson of the legislative body of the local government) must, within thirty (30) days after such enactment or adoption, notify the Code Council of the enactment or adoption and petition the Code Council for a determination that the standards imposed by the local law or ordinance:

1. are, in fact, higher or more restrictive than the Uniform Code,
2. are reasonably necessary because of special conditions prevailing within the local government, and
3. conform with accepted engineering and fire prevention practices and the purposes of Article 18 of the Executive Law.

DOS form [DOS-1471-f](#) is available on the Division’s website and can be used to provide the required notice and petition to the Code Council. The form includes instructions to assist local governments in petitioning the Code Council for approval of the standards imposed by the local law or ordinance. Please note that this notice and petition to the Code Council is separate from the filing required by Municipal Home Rule Law §27, whereby all local laws must be filed with the Secretary of State. A local law or ordinance imposing more restrictive construction standards will take full force and effect only ***after*** the Code Council makes an affirmative determination.

Although not defined, “special conditions” may be thought of as a local or regional hazard that would require a higher or more restrictive standard than that provided by the Uniform Code in order to maintain a minimum level of protection and safety. The following example demonstrates how the Uniform Code may not adequately address the special conditions prevailing within in a local government, making a more restrictive standard reasonably necessary²:

A significant percentage of the citizens of a town have feet measuring greater than 14 inches. These “big feet” require big stair treads (at least 14 inches). From the [2017 Uniform Code Supplement](#), which modified Section R311.7.5.2 of the [2015 International Residential Code](#): *The tread depth shall be not less than 9 inches. The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread’s leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch.* The Uniform Code requires stair treads to be not less than 9 inches, however the special conditions (the citizens with “big feet”) require stair treads to be at least 14 inches (the more restrictive standard). In this example, documentation of the special conditions could be in the form of local census data or some other means of quantifying the number of people in the town with “big feet”.

The Department of State recommends that a local government consult with its attorney in all matters relating to enactment or adoption of the local law or ordinance, and in all matters relating to preparation and submission of the required notice and petition to the Code Council. For additional information or questions, local governments may contact the Code Development Unit (Gerard.Hathaway@dos.ny.gov). Local governments should conduct an analysis of the Uniform Code prior to adopting a more restrictive standard to confirm that the potential special conditions are not currently addressed by the Uniform Code. If a local government is unsure whether the Uniform Code adequately addresses the special conditions prevailing within the local government, the Technical Support Unit may be contacted (codes@dos.ny.gov) for guidance.

Please look for our next edition of the Code Outreach Program at the beginning of next month.

¹ Executive Law §379(5) authorizes Nassau County to enact or adopt local laws or ordinances imposing more restrictive standards for construction.

² As noted above, the local government is petitioning the Code Council for approval, therefore, only the Code Council can determine if a special condition exists and if the requirements of Executive Law §379 have been satisfied.

DBSC - A Division of Department of State
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If you have questions pertaining to the Code Outreach Program, email us at COP.codes@dos.ny.gov

If you have questions pertaining to the Uniform Code or Energy Code, email our technical support group at: codes@dos.ny.gov.

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