



Comments on the Proposed Amendment to Rule101-07 Relating to Progress Inspections and on the Proposed Adoption of Rule 5000-01 Relating to Construction Document Compliance with the NYC Energy Conservation Code

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**Prepared by the Green Building Committee of the Citizens Housing & Planning Council
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The Citizens Housing & Planning Council is a not for profit organization that has, since 1937, provided research, policy analysis, and comment on issues that would: improve the quality of life in our neighborhoods; support sound land use planning to encourage sensible growth; increase economic opportunities within NYC; and improve and expand the housing stock for our residents. CHPC's committee on Green Building seeks to encourage the construction and adaption of buildings that are environmentally sustainable, while preserving affordability and managing costs. Much of the committee's work involves identifying obstacles to these objectives, suggesting ways to eliminate them, and developing new regulatory frameworks and incentives that will encourage the widespread incorporation of sound environmental practices in the construction and renovation of housing in NYC.

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Our committee has reviewed the proposed amendment and adoption of new rules related to the NYC Energy Conservation Code, and supports the Department of Buildings in its efforts to assure that buildings, additions, and alterations are constructed to meet energy efficiency standards.

However, we have concerns that these new rules will have the unintended consequence of adding to the cost of development, particularly of affordable housing. This is especially troubling at a time when new construction is extremely limited, government subsidies are severely constrained, and the need for the production of affordable housing is increasing.

The additional progress inspections that are proposed are extensive, potentially burdensome, and ultimately expensive. Affordable housing developments over three stories will also be required to follow the progress inspections for commercial buildings rather than those for residential stock. We recommend that, instead of expanding the regulatory burden that directly affects the development of affordable housing, DOB should consider the economic impact of its rules and seek a balance between appropriate oversight to meet laudable energy efficiency goals and the equally important objective of facilitating new construction and renovation in NYC.

An example of a more balanced approach may be found in the NYSERDA Multi-Family Performance Program and/or other energy efficiency programs which do require limited commissioning or third party inspections. To help achieve a better balance between sound oversight and cost control, consideration should be given to permit contractor certifications for some items. There could be a reasonable reliance on approved shop drawings and product data for compliance, and field inspections may be more narrowly defined. Sampling should also be considered instead of full inspections or testing, which is a cost effective way to assure compliance. For example, many of NYSERDA's inspections and testing requires sampling of 10% of the duct work. If the sample does not meet the requirements then more inspection or testing is done. For such projects where many of the mandated progress inspections are already being addressed, we believe that it should be possible to accept compliance with the NYC Energy Code through the inspections required for such NYSERDA or other energy efficient programs.

Our specific comments below seek to clarify parts of the rules which are unclear, improve efficiency, and eliminate or reduce excessive cost increases that would result from the proposed rules. We have summarized the comments of our committee in response to the proposed rules as follows:

1. Qualifications for Progress Inspections

The Supplemental Inspector for Energy Code compliance (residential and commercial) is required to have "3 years experience in the inspection or construction observation of buildings for Energy Code-regulated systems." While it is reasonable to require an

appropriate level of experience for the required inspections, the 3 year experience requirement will result in the use of more senior personnel and higher cost for affordable housing and other projects. Since the required inspections are primarily visual inspections and the Supplemental Inspector will work under the direct supervision of the Primary Inspector / Inspection Supervisor, a one (1) year experience requirement may be an appropriate balance between adequate experience and the cost of this service. See also the general comment above regarding use of third party inspectors for the NYSERDA MFPP or similar programs as an alternate path to compliance.

2. Electrical construction drawings required

Please note that this provision will require submission of electrical drawings to the DOB resulting in additional paperwork, potential delays due to reviews and potential added cost for affordable housing and other projects.

3. Residential progress inspections

The minimum frequency of many of the progress inspections is noted “as required.” This phrase is vague and open to interpretation. A more specific description might be offered, such as “at the beginning of installation and at least once during the course of the installation.” It is important to assure compliance with Energy Code provisions, but excessive inspection requirements will add to the cost of affordable housing and other projects. While daily inspection may be ideally desirable for provisions such as sealing or moisture control, such extensive inspections are not practical or affordable.

4. Residential progress inspections for moisture control (IA8)

This inspection notes frequency as “daily or as required.” See comment #4 above. This should also be a truly periodic, not continuous inspection.

5. Commercial progress inspections

See comment #4 above.

6. Commercial progress inspections for foundation insulation and moisture control (IIA1 and IIA3)

These inspections note frequency as “daily or as required.” See comment #5 above.

7. Residential and commercial fenestration ratings (IA4, IIA4 and IIA5)

Where glazing labels do not provide the information, the inspector should be able to rely on approved shop drawing / product data submittals made by the contractor providing the window, door, or glazed element. Consideration should be given to requiring certification by the contractor that the installed windows, etc. meet the requirements of the construction documents and the approved shop drawings/product data.

8. Fenestration areas (IA5 and IIA6)

What does “visual inspection” mean for this item? Measuring all openings for verification in a large building will be burdensome and expensive. Consideration should be given to spot checking and/or a contractor’s report certifying the size of openings.

9. Commercial progress inspections for HVAC system controls and air leakage (IIB4 and IIB6)

Consideration should be given to allowing these inspections/tests to be performed by an independent testing agency retained by the contractor, similar to the provisions for air balancing. The registered design professional of record or a special inspection agency with the required experience may not have the capabilities to perform these tests/inspections. And while the costs of these tests/inspections can be absorbed into the typical HVAC construction contract, the cost of having the design professional administer these tests may be higher.

10. HVAC controls systems commissioning (IIB7)

This is a requirement for the progress inspector to witness commissioning activities. On projects where there is a commissioning agent, this seems redundant and an unnecessary cost. Where there is not a commissioning agent, it is not clear how this inspection would be implemented.

11. Lighting controls and tandem wiring (IIC1 and IIC2)

Similar to the HVAC systems controls, the registered design professional of record or a special inspection agency with the required experience may not have the capabilities to perform testing, as opposed to visual inspection.

12. Interior and Exterior lighting power (IIC4 and IIC5)

Is the intent for a visual check that fixtures are installed in the patterns indicated on the construction documents? Detailed checking of fixtures, ballasts, etc. will be burdensome and expensive. This progress inspection should allow for reliance on approved shop drawing / product data submittals.

13. Electric motors (IIC8)

On large projects with many motors, this inspection could be extensive, burdensome and expensive. Consideration should be given to requiring certification by the contractor that the installed motors meet the requirements of the construction documents and the approved shop drawings / product data.

14. Maintenance information (IID1)

This is a requirement for the progress inspector to review maintenance manuals. On projects where there is a commissioning agent, this seems redundant and an unnecessary cost.

In closing, we appreciate the opportunity to provide comments on the proposed rules and hope that you will consider them as you continue to apply sound regulatory oversight to ensure that our City's goals of increasing environmental sustainability as well as its housing stock can be met.