Committee on Housing & Buildings

Austen Brandford, Senior Counsel

Audrey Son, Counsel

Genan Zilkha, Counsel

Jose Conde, Senior Policy Analyst

Charles Kim, Policy Analyst

Sarah Gastelum, Principal Financial Analyst

Luke Zangerle, Financial Analyst



**THE COUNCIL OF THE CITY OF NEW YORK**

**BRIEFING PAPER and committee report OF the INFRASTRUCTURE DIVISION**

Jeffrey Baker, Legislative Director

Terzah Nasser, Deputy Director, Infrastructure Division

**COMMITTEE ON HOUSING AND BUILDINGS**

Hon. Robert Cornegy, Jr., Chair

**November 10, 2020**

**Oversight: COVID-19 and Reopening Commercial Spaces**

**Int. No. 2033:** By Council Member Cornegy (by request of the Mayor)

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to statements of compliance, issuance and posting requirements of certificates of occupancy and interim certificates of occupancy

**Administrative Code:** Amends section 28-105.5; amends table 28-112.8; amends section 28-118.4.2; amends section 28-115; amends section 28-118.17; amends section 28-118.19

1. **Introduction**

On November 10, 2020, the Committee on Housing and Buildings, chaired by Council Member Robert Cornegy, Jr., will hold an oversight hearing entitled “Oversight: COVID-19 and Reopening Commercial Spaces.” The Committee will also hear In. No. 2033, sponsored by Chair Cornegy. The Committee expects to receive testimony from the New York City Department of Buildings (DOB), advocates, and other key stakeholders.

1. **Background - The COVID-19 Pandemic**
   1. COVID-19

In December of 2019, a novel coronavirus caused an outbreak of a severe acute respiratory illness in Wuhan, China.[[1]](#footnote-2) On February 11, 2020, the World Health Organization (WHO) announced the official name of this illness as coronavirus disease 2019, or “COVID-19.”[[2]](#footnote-3) COVID-19 is caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).[[3]](#footnote-4) Symptoms of COVID-19, which may occur two to 14 days after exposure, include, but are not limited to, fever, cough, fatigue, loss of taste or smell, chest pain, and shortness of breath.[[4]](#footnote-5) Individuals with certain medical conditions, like asthma, heart disease, and high blood pressure, are at risk for suffering more seriously from COVID-19.[[5]](#footnote-6) The risk of dying from COVID-19 increases by age: of every 1,000 infected individuals in their mid-70s or older, 116 will die.[[6]](#footnote-7) Of every 1,000 infected individuals in their 50s and mid-60s, five will die. Of every 1,000 infected individuals under the age of 50, almost none will die.[[7]](#footnote-8) Men are more likely than women to die after being infected with COVID-19.[[8]](#footnote-9)

* 1. *COVID-19 Transmission*

According to the Centers for Disease Control and Prevention (CDC), the most likely mode of COVID-19 transmission is “person-to-person spread.”[[9]](#footnote-10) This can occur when two or more people are in close contact (*i.e.*, within six feet of each other) and the respiratory droplets of an infected person, expelled through coughing, sneezing, or talking, are inhaled by someone else.[[10]](#footnote-11) It is also possible that a person can be infected by touching a surface that has the virus on it and then touching their own mouth, nose, or eyes.[[11]](#footnote-12)

* 1. *COVID-19 cases in New York City*

The first case of COVID-19 in New York City and New York State was confirmed on March 1, 2020.[[12]](#footnote-13) The number of confirmed and probable cases in New York City increased daily, from 17 on March 10, 2020, to more than 5,000 on March 25, 2020. By April 4, there were over 6,000 cases.[[13]](#footnote-14) The number of confirmed and probable cases began to decline in May. By June 9, there were 347 confirmed and probable cases.[[14]](#footnote-15) The number of confirmed and probable COVID-19 cases varied by day but hovered below 1,000 until October 29, when they reached 1,058. As of November 2, 2020, there have been at least 268,879 confirmed and probable cases of COVID-19 in New York City and 24,013 deaths.[[15]](#footnote-16)

Throughout the summer, COVID-19 related hospitalizations and deaths remained consistently low and continued to fall.[[16]](#footnote-17) The decrease in COVID-19 related infection could be attributed to school closures, stay at home measures and the mandated use of masks.[[17]](#footnote-18)

Although the number of confirmed and probable COVID-19 cases in New York City has declined from its April peak[[18]](#footnote-19) with a statewide positivity rate of 1.51%,[[19]](#footnote-20) and a citywide positivity rate of 1.87%,[[20]](#footnote-21) positive COVID-19 cases have increased in certain areas. In October, 20 zip codes in Brooklyn and Queens were divided into “red zones,” “orange zones,” and “yellow zones” based on positive COVID-19 cases.[[21]](#footnote-22) In red zones, which included Borough Park, Midwood, and Gravesend, in-person learning was not allowed, mass gatherings were forbidden, houses of worship could host no more than ten people at a time, non-essential businesses were closed, and restaurants could only provide takeout and delivery.[[22]](#footnote-23) COVID-19 positivity rates have decreased in many of the red zones but, even so, there are six zip codes with positivity rates over 5%.[[23]](#footnote-24) Despite this, schools in these zip codes have been permitted to reopen.[[24]](#footnote-25)

1. **Orders and Guidance Managing the Spread of COVID-19**
   1. Executive Order 202.8

On March 7, 2020, Governor Andrew Cuomo signed Executive Order 202, “Declaring a Disaster Emergency in the State of New York.”[[25]](#footnote-26) Subsequently on March 20, 2020, Governor Cuomo signed Executive Order No. 202.8,[[26]](#footnote-27) also known as the “New York State on PAUSE” executive order.[[27]](#footnote-28) This executive order contained a ten-point policy to “assure uniform safety for everyone.”[[28]](#footnote-29) This executive order required all non-essential businesses statewide to close by March 22, 2020 at 8:00 p.m.[[29]](#footnote-30)

* 1. New York State Reopening Phases

On April 26, 2020, Governor Cuomo announced a multi-phase plan to reopen the state.[[30]](#footnote-31) For each phase, each region of the state had to meet certain metrics in order to reopen and then to qualify for entry into the subsequent phase.[[31]](#footnote-32) Phase One permitted the reopening of construction, agriculture, retail limited to curbside and in-store pickup and drop off, manufacturing, and wholesale trade.[[32]](#footnote-33) New York City entered Phase One on June 8.[[33]](#footnote-34)

On June 22, the City entered Phase Two.[[34]](#footnote-35) Phase Two permitted the opening of offices, real estate, and some retail.[[35]](#footnote-36) Offices could only be open if appropriate physical distancing was followed, protective equipment was provided, and CDC and New York State Department of Health (NYSDOH) hygiene, cleaning and disinfection requirements were adhered to.[[36]](#footnote-37)

Real estate activities were permitted so long as total occupancy remained at 50% of the maximum occupancy, and proper social distancing was followed,[[37]](#footnote-38) workers were provided with acceptable protective equipment, and CDC and NYSDOH hygiene, cleaning and disinfection requirements were adhered to.[[38]](#footnote-39) Employees must be screened for COVID-19 and residential in-person property showings could only occur in unoccupied or vacant properties, so long as the showings were staggered and all individuals wore face masks.[[39]](#footnote-40)

Finally, in-store non-essential retail business could commence so long as precautions such as social distancing, protective equipment for employees, proper hygiene, cleaning and disinfection requirements were followed, and employees were screened daily for COVID-19.[[40]](#footnote-41) In New York City, under Phase Two, restaurants could open up for outdoor dining, salons could see clients indoors, and playgrounds could to reopen.[[41]](#footnote-42)

* 1. New York State Guidance on Reopening Office Spaces

The State’s guidance for office-based work is applicable, but not limited, to businesses and entities in the following sectors: professional services, nonprofits, technology, administrative support, and higher education administration.[[42]](#footnote-43) For office spaces, the parties responsible for meeting these standards are the owners or operators of the business with office-based functions, or their designees. While the owner of the building, or their designee, is primarily responsible for unleased and common areas, tenants are responsible for the individual office spaces they rent.[[43]](#footnote-44) The guidance establishes mandatory minimum requirements and recommended best practices in the following areas: physical distancing, protective equipment, hygiene and cleaning, communication, and screening.[[44]](#footnote-45) Office spaces must additionally meet the minimum standards set by the Americans with Disabilities Act (ADA), the CDC, Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA) in order to operate.[[45]](#footnote-46)

With respect to physical distancing, the guidance establishes, *inter alia*, the following mandatory requirements: responsible parties must limit the number of occupants in an office to 50% of the maximum occupancy as set by the certificate of occupancy; a distance of six feet must be maintained between occupants unless the safety of the task requires a closer distance; signs and markers denoting the six foot distance should be posted; requiring the use of face coverings when coming within six feet of another person; in-person gatherings must be limited to the extent practicable; and interpersonal contact should be reduced, where possible.[[46]](#footnote-47)

In addition to mandatory requirements, there are a number of recommended best practices, including, but not limited to: modifying or reconfiguring workstations to ensure six feet of distance in all directions;[[47]](#footnote-48) implementing strict clean-desk policies;[[48]](#footnote-49) limiting the use of shared workspaces;[[49]](#footnote-50) and staggering work schedules.[[50]](#footnote-51)

*Hygiene and Cleaning*

Responsible parties must adhere to the cleaning and disinfecting guidelines set forth by the CDC and the New York State Department of Health (DOH). This includes, but is not limited to, providing and maintaining hand washing and sanitizing stations, which must be equipped with soap, warm running water, paper towels, lined trash cans, and hand sanitizer where hand washing stations are not available; encouraging the use of disinfectants before and after using high-touch equipment (*e.g.*, copy machines); and regularly and more rigorously cleaning the office space, particularly high-touch and high-risk areas.[[51]](#footnote-52) The guidance also recommends opening windows and doors wherever possible in order to increase the ventilation of outdoor air.[[52]](#footnote-53)

*Screening*

Responsible parties must implement mandatory health screening assessments and coordinate with building managers to facilitate screening.[[53]](#footnote-54) The guidance recommends that screening be conducted at or near the building entrance to minimize the potential impact that a positive individual’s presence may have on colleagues.[[54]](#footnote-55)

* 1. New York State Guidance on Managing Commercial Buildings

*Physical distancing*

The guidance for commercial building management requires the owners, in coordination with the tenants, to limit occupancy to 50% for areas, and should work with tenants to establish and enforce capacity limits.[[55]](#footnote-56) It also requires coordination with tenants to ensure social distancing on the work floor, including reduction in the number of seats at workstations, and no sharing of workstations without cleaning and disinfection between use.[[56]](#footnote-57) The guidance also recommends prohibiting the shared use of confined spaces without face coverings, and to create one-way foot traffic in hallways and other spaces.[[57]](#footnote-58)

A requirement contained within the guidance document, as opposed to suggestions, is that building owners must post signage reminding persons to practice proper coughing and sneezing hygiene, properly store and discard PPE, “adhere to physical distancing instructions,” “report symptoms of or exposure to COVID-19,” and “follow hand hygiene.”[[58]](#footnote-59) Additional requirements include taking “measures to reduce interpersonal contact and congregation through” various means, including staggered schedules, prioritizing certain tasks that allow for social distancing, limiting in-person workers to those who are essential.[[59]](#footnote-60)

The guidance also suggests that owners increase ventilation with outdoor air “to the greatest extent practicable... while maintaining safety protocols” and they “should also take additional measures to prevent congregation in elevator waiting areas and limit density in elevators, such as enabling the use of stairs.”[[60]](#footnote-61)

*Building systems*

The guidance document also contains requirements to ensure appropriate operation of building systems in buildings that have been entirely closed, including the completion of “pre-return checks” that include mechanical, heating, ventilation and air conditioning (HVAC) and water systems and elevators to ensure a healthy and safe environment.[[61]](#footnote-62) Before re-occupancy, building owners are also required to ensure maintenance of cooling towers, flush the water systems, ensure replacement of water filters, and flush the building with fresh air for at least 24 hours.[[62]](#footnote-63) While the pre-return checks are mandated, the guidance ultimately leaves it up to the discretion of the owner as to how the checks should be performed. The guidance distinguishes between buildings that have been entirely closed and buildings that have remained open.[[63]](#footnote-64)

For buildings that have remained open, the State requires owners to “receive verification of suitability for occupancy from building engineers.”[[64]](#footnote-65)

*Processes*

The guidance also suggests that that building owners should coordinate with tenants to “facilitate screening,” and also suggests that essential visitors to the building should disclose and be screened for any symptoms.[[65]](#footnote-66) Those performing the screening should be supplied with appropriate personal protective equipment.[[66]](#footnote-67)

1. **City’s Enforcement of Safety Measures** 
   1. New York City Department of Health and Mental Hygiene (DOHMH)

DOHMH has issued general guidance on how to help slow the transmission of COVID-19 in businesses and other non-health care settings.[[67]](#footnote-68) While building staff are required to wear face masks pursuant to an Executive Order by Governor Andrew Cuomo,[[68]](#footnote-69) this guidance also suggests promoting social distancing by, among other things, limiting elevator occupancy and discouraging groups of people from gathering inside.[[69]](#footnote-70) It also suggests conducting routine cleaning and disinfection of high-touch surfaces (*e.g*., door knobs, handrails, etc.) and promoting hand hygiene.[[70]](#footnote-71) The DOHMH guidance suggests additional measures and equipment that can help curb the spread of COVID-19, including personal protective equipment and frequent hand-washing or use of hand sanitizer.[[71]](#footnote-72)

As the City entered Phase Two of reopening, which allowed for the reopening of certain commercial spaces, DOHMH issued additional guidance for managers of commercial buildings.[[72]](#footnote-73) This guidance reiterates suggested methods to mitigate transmission and also includes a list of required measures to be completed prior to reopening a commercial space. First, pursuant to state regulations, commercial building management must develop a safety plan that outlines how the spread of COVID-19 will be prevented in the building.[[73]](#footnote-74) Second, building management but read the state guidelines related to reopening commercial spaces and affirm compliance with such guidelines.[[74]](#footnote-75)

DOHMH works with other City agencies to spread information about relevant guidance and enforce applicable requirements. According to a document prepared by the New York City Department of Small Business Services (SBS), “reopening requirement inspections are coordinated by the Office of Special Enforcement (OSE) and staffed by various agencies,” including DOHMH.[[75]](#footnote-76) While the primary goal is outreach and education regarding guidelines, enforcement actions are possible “in exceptional cases or for persistent violations.”[[76]](#footnote-77)

* 1. Department of Buildings (DOB) Role in Re-Opening

Throughout the COVID-19 crisis, DOB has focused on mitigating the spread of the virus within construction sites, enforcing guidance issued by both DOB and NYSDOH.[[77]](#footnote-78) Noncompliance with guidance may result in financial penalties, and further noncompliance may result in a Stop Work Order.[[78]](#footnote-79)

With regards to reopening commercial spaces, DOB has not issued relevant guidance for the owners or operators of commercial buildings. In addition, the agency has not publicly discussed any efforts to issue guidance or implement regulations requiring certain building upgrades that may reduce the spread of COVID-19 (e.g. updated HVAC and air filtration systems). The primary source of guidance here seems to the guidance from NYSDOH,[[79]](#footnote-80) but whether such guidance is being enforced, and by which agency, remains unclear.

**Legislation**

Below is a brief summary of the legislation being heard by the Committee at this hearing. This summary is intended for informational purposes only and does not substitute for legal counsel. For more detailed information, you should review the full text of the bill, which is attached below.

**Int. No. 2033, A Local Law to amend the administrative code of the city of New York, in relation to statements of compliance, issuance and posting requirements of certificates of occupancy and interim certificates of occupancy**

Int. No. 2033 would allow the Department of Buildings (DOB) to issue interim certificates of occupancy to authorize occupancy of specific floors of a building prior to completion of permitted construction work on the building. This bill would not apply to residential buildings with fewer than eight stories or four dwelling units, non-residential buildings with fewer than five stories, mixed-use buildings with fewer than four dwelling units, or parking structures. This bill would also allow for the permit holder to submit the signed statement of compliance required by section 28-118.4.2 of the Administrative Code of the city of New York. It would also require building owners to post a copy of partial certificates of occupancy and temporary certificates of occupancy in accordance with section 28-118.19 of the Administrative Code.

This legislation would take effect 120 days after becoming law.

Int. No. 2033

By Council Member Cornegy (by request of the Mayor)

..Title

A Local Law to amend the administrative code of the city of New York, in relation to statements of compliance, issuance and posting requirements of certificates of occupancy and interim certificates of occupancy

..Body

Be it enacted by the Council as follows:

Section 1. Section 28-101.5 of the administrative code of the city of New York is amended by adding a definition of the term “interim certificate of occupancy”, in alphabetical order, to read as follows:

**INTERIM CERTIFICATE OF OCCUPANCY.** A type of temporary certificate of occupancy authorizing occupancy of one or more floors of a building prior to the completion of all work needed to obtain a certificate of occupancy for the building, and that remains in effect until the issuance of a certificate of occupancy for the building.

§ 2. Table 28-112. 8 of the administrative code of the city of New York is amended by adding a fee for “interim certificate of occupancy” to read as follows:

| **TABLE 28-112.8** | | | |
| --- | --- | --- | --- |
| **SERVICE TYPE** | **FEE** | **RENEWALS** | **COMMENTS** |
| Application for interim certificate of occupancy | $130 |  |  |

§ 3. Section 28-118.4.2 of the administrative code of the city of New York, as added by local law number 33 for the year 2007, is amended to read as follows:

**§ 28-118.4.2 Statement of compliance.** When a certificate of occupancy for a new or altered building is applied for, the application shall be accompanied by a signed statement of the registered design professional of record or [the superintendent of construction, as applicable,] permit holder stating that such person has examined the approved construction documents and specifications of the building for which the certificate of occupancy is sought, and that, to the best of his or her knowledge and belief, the building has been erected or altered in accordance with the approved construction documents and specifications and, as erected or altered, complies with the provisions of this code and all other applicable laws and rules, except insofar as variations or variances therefrom have been legally permitted or authorized, specifying such variations or variances in such required statement.

§ 4. Section 28-115 of the administrative code of the city of New York, as added by local law number 33 for the year 2007, is amended to read as follows:

**§ 28-118.15 Temporary certificates of occupancy.** Upon application, the commissioner is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that the subject portion or portions of the building may be occupied and maintained in a manner that will not endanger public safety, health, or welfare. The commissioner shall set a time period during which the temporary certificate of occupancy is valid. The provisions of section 28- 118.15.1 apply only to interim certificates of occupancy. Nothing in section 28-118.15.1 is intended to affect, alter or amend the commissioner’s power to issue or to set time periods for the expiration of temporary certificates of occupancy that are not interim certificates of occupancy.

**§ 28-118.15.1 Interim certificate of occupancy.** An interim certificate of occupancy may be issued authorizing occupancy of a specific floor or floors of a building prior to the completion of the entire work covered by a permit in accordance with this section and rules of the department, subject to the following conditions:

1. The building is of noncombustible construction and protected with an automatic sprinkler system.

2. Adequate means of egress are provided;

3. There are no outstanding objections relating to or affecting the occupancy of such portion of the building; and

4. Upon inspection, the portion of the building is deemed safe for occupancy without reliance upon temporary measures.

**Exceptions:** Section 28-118.15.1 shall not apply to:

1. Residential buildings with fewer than eight stories or fewer than four dwelling units; or

2. Non-residential buildings with fewer than five stories; or

3. Mixed-use buildings with fewer than four dwelling units; or

4. Parking structures.

**§ 28-118.15.1.1 Issuance, contents and posting of interim certificate of occupancy.** An interim certificate of occupancy shall be issued after an inspection by the commissioner determines that the floor or floors of the building conform substantially to the approved construction documents and to the provisions of this code and other applicable laws and rules. Such interim certificate of occupancy shall contain the same information as a certificate of occupancy issued pursuant to section 28-118.6 and shall be posted while it is in effect in accordance with section 28-118.19 and replaced when necessary in accordance with section 28-119.1.

**§ 28-118.15.1.2 Effective period.** An interim certificate of occupancy shall remain in effect until the issuance of a certificate of occupancy for the building in accordance with section 28-118.6.

**§ 28-118.15.1.3 Revocation and suspension.** The commissioner may revoke or suspend an interim certificate of occupancy that was issued in error or on the basis of incorrect information provided to the department or based on discontinuance of a nonconforming use pursuant to Article V of the New York City Zoning Resolution, in accordance with the procedures set forth in sections 28-105.10.1 and 28-105.10.2 for the suspension or revocation of a permit.

§ 5. Section 28-118.17 of the administrative code of the city of New York, as added by local law number 33 for the year 2007, is amended to read as follows:

**§ 28-118.17 Revocation of certificates of occupancy.** The commissioner is authorized to request, in writing, pursuant to section six hundred forty five of the New York city charter that the board of standards and appeals or a court of competent jurisdiction revoke, vacate, or modify a certificate of occupancy issued under the provisions of this code whenever the certificate is issued in error, or on the basis of incorrect information provided to the department, or the nonconforming use reflected on the certificate of occupancy is no longer permitted pursuant to Article V of the New York city zoning resolution. This section shall not be construed to apply to interim certificates of occupancy and other temporary certificates of occupancy.

§ 6. Section 28-118.19 of the administrative code of the city of New York, as added by local law number 33 for the year 2007, is amended to read as follows:

**§ 28-118.19 Posting of certificates of occupancy.** The owner shall post a copy of the building’s certificate of occupancy, partial certificates of occupancy or temporary certificates of occupancy in accordance with this section 28-118.19, except buildings occupied entirely by group R3. Buildings that are not required to have a certificate of occupancy shall be posted by the owner with a sign or placard in a form prescribed by the commissioner. The certificate of occupancy or sign, as applicable, shall be permanently affixed to the structure in a conspicuous location in a public hall, corridor, management office of the building or as otherwise prescribed by the commissioner.

**§ 28-118.19.1 Replacement of posted certificates of occupancy and signs.** All posted certificates of occupancy, partial certificates of occupancy, temporary certificates of occupancy or signs, as applicable, shall not be removed or defaced and, if lost, removed or defaced, shall be immediately replaced. The commissioner may inspect or cause to be inspected periodically all buildings for compliance with the provisions of this code in regard to posting; and the inspection reports shall specify any violation thereof.

§ 7. This local law takes effect 120 days after it becomes law.

LS # 16132

8/25/20 12:04 p.m.

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3. Natasha Priya Dyal, MD, “First Case of COVID-19 in NYC, First Death Reported in Washington State,” Infectious Disease Advisor, (Mar. 3, 2020), https://www.infectiousdiseaseadvisor.com/home/topics/respiratory/first-case-of-covid-19-in-nyc-first-death-reported-in-washington-state/ [↑](#footnote-ref-4)
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6. Smriti Mallapaty, “The coronavirus is most deadly if you are older and male — new data reveal the risks,” (Aug. 28, 2020) Nature, https://www.nature.com/articles/d41586-020-02483-2 [↑](#footnote-ref-7)
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9. Centers for Disease Control and Prevention, *How COVID-19 Spreads*, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last accessed June 22, 2020). [↑](#footnote-ref-10)
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13. *Id.* [↑](#footnote-ref-14)
14. *Id.* [↑](#footnote-ref-15)
15. *Id.* [↑](#footnote-ref-16)
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23. Kim, *supra* note 20. [↑](#footnote-ref-24)
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