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Title: A Local Law to amend the New York city fire and building codes and the administrative code of the city of New York, in relation to the qualifications of individuals to perform periodic inspection, test and maintenance fire and smoke dampers and smoke control systems

Sponsors: Pierina Ana Sanchez, Farah N. Louis, Lincoln Restler, Jennifer Gutiérrez, Crystal Hudson, Oswald Feliz, Christopher Marte, Carlina Rivera, Althea V. Stevens, Carmen N. De La Rosa, Julie Won, Lynn C. Schulman, Sandra Ung, Francisco P. Moya, Kristy Marmorato, (in conjunction with the Bronx Borough President)

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2/29/2024	*	Committee on Housing and Buildings	Laid Over by Committee	

Int. No. 88

By Council Members Sanchez, Louis, Restler, Gutiérrez, Hudson, Feliz, Marte, Rivera, Stevens, De La Rosa, Won, Schulman, Ung, Moya and Marmorato (in conjunction with the Bronx Borough President)

A Local Law to amend the New York city fire and building codes and the administrative code of the city of New York, in relation to the qualifications of individuals to perform periodic inspection, test and maintenance fire and smoke dampers and smoke control systems

Be it enacted by the Council as follows: Section 1. Section FC 703.1.2 of the New York city fire code, as amended by local law 47 for the year 2022, is amended to read as follows:

703.1.2 Smoke barriers and smoke partitions. Required smoke barriers and smoke partitions shall be maintained and inspected to prevent the passage of smoke. All openings protected with approved smoke

barrier doors or smoke dampers shall be maintained in accordance with NFPA 105 and inspected at minimum 1 year after installation and with a 4-year frequency thereafter, except for hospitals which shall have a 6-year frequency thereafter, or more frequently if required by NFPA 105. The remote inspection method defined in the periodic testing section of NFPA 80 and NFPA 105 shall not be used in place of visual inspection for the periodic testing required under this section. All fire dampers and smoke dampers and combination fire and smoke dampers shall be tested regardless of location. Proof of such inspection shall be submitted to the department by the landlord of each building inspected.

§ 2. Chapter 7 of the New York city fire code is amended by adding new sections FC 703.1.2.1 and FC 703.1.2.2 to read as follows:

703.1.2.1 Inspector qualifications. Inspections and tests conducted pursuant to this section shall be performed by a qualified contractor that meets all the following criteria:

1. A contractor that provides inspections and testing of HVAC fire dampers and smoke dampers and combination fire and smoke dampers shall hold an ICB Fire and Smoke Damper Contractor certification or equivalent certification from an organization that has been accredited under the ISO/IEC 17024 Personnel Certification standard in HVAC fire dampers and smoke dampers and combination fire and smoke dampers inspections.

2. For inspection and testing of HVAC fire dampers and smoke dampers and combination fire and smoke dampers, a contractor shall employ only a skilled and trained workforce. For the purposes of this section, a “skilled and trained workforce” means a workforce not less than 60 percent of which is composed of graduates of an apprenticeship program approved by the New York State Department of Labor.

3. For inspection and testing of HVAC fire dampers and smoke dampers and combination fire and smoke dampers a contractor shall employ technicians who hold an ICB Smoke Control Systems Technician certification or equivalent certification from an organization that has been accredited under the ISO/IEC17024 Personnel Certification standard in HVAC fire dampers and smoke dampers and combination fire and smoke dampers inspections.

4. All technicians performing inspections and testing of HVAC fire dampers and smoke dampers and combination fire and smoke dampers must be employed by an independent contractor that is not a subsidiary of the building owner or building management company. An independent contractor shall be defined as not owning or being directly managed by the building owner(s), or immediate family member of the building being inspected. For the purposes of this section, subsidiary means any corporation or other organization, whether incorporated or unincorporated, in which the company owns, directly or indirectly, any equity or other ownership interest. The owner of the property shall not act as their own contractor.

703.1.2.2 Certificate of compliance and notice of deficiency. A certificate of compliance shall be issued, in accordance with provisions included in section FC 703.1.5, after the performance of an inspection that determines a damper is in good working condition. Such certificate shall identify the inspector, the inspector’s employer, the name of the owner of the building inspected and its address. When such inspection results in a determination that a damper is not functioning properly, a notice of deficiency shall be issued noting the deficiency and reason for non-compliance. The building owner shall be obligated to cure the deficiency within a time period determined by the commissioner.

§ 3. Section FC 703.1.3 of the New York city fire code is amended to read as follows:

703.1.3 Fire Walls, Fire Barriers and Fire Partitions. Required fire walls, fire barriers and fire

partitions shall be maintained to prevent the passage of fire. All openings protected with approved doors, fire dampers [or] and combination fire and smoke dampers shall be maintained and inspected at minimum 1 year after installation and with a 4-year frequency thereafter, except for hospitals which shall have a 6-year frequency thereafter, in accordance with the most recently adopted version of NFPA 80, 92, and 105. Fire dampers and smoke dampers and combination fire and smoke dampers shall include the Visual Inspection Method as defined in the Periodic Testing section of NFPA 80 and NFPA 105. The Remote Inspection Method set defined in the Periodic Testing section of NFPA 80 and NFPA 105 shall not be used in place of visual inspection for the periodic testing required under this section. All fire dampers and smoke dampers and combination fire and smoke dampers shall be tested regardless of location.

§ 4. Chapter 7 of the New York city fire code is amended by adding a new section FC 703.1.3.1

to read as follows:

703.1.3.1. Inspector qualifications Inspections and tests conducted pursuant to this section shall be performed by a qualified contractor that meets all the following criteria

1. A contractor that provides inspections and testing of HVAC fire dampers and smoke dampers and combination fire and smoke dampers shall hold an ICB Fire and Smoke Damper Contractor certification or equivalent certification from an organization that has been accredited under the ISO/IEC 17024 Personnel Certification standard in HVAC fire dampers and smoke dampers and combination fire and smoke dampers inspections.

2. For inspection and testing of HVAC fire dampers and smoke dampers and combination fire and smoke dampers, a contractor shall employ only a skilled and trained workforce. For the purposes of this section, a “skilled and trained workforce” means a workforce not less than 60 percent of which is composed of graduates of an apprenticeship program approved by the New York State Department of Labor.

3. For inspection and testing of HVAC fire dampers and smoke dampers and combination fire and smoke dampers a contractor shall employ technicians who hold an ICB Smoke Control Systems Technician certification or equivalent certification from an organization that has been accredited under the ISO/IEC17024 Personnel Certification standard in HVAC fire dampers and smoke dampers and combination fire and smoke dampers inspections.

4. All technicians performing inspections and testing of HVAC fire dampers and smoke dampers and combination fire and smoke dampers must be employed by an independent contractor that is not a subsidiary of the building owner or building management company. An independent contractor shall be defined as not owning or being directly managed by the building owner(s), or immediate family member of the building being inspected. For the purposes of this section, a subsidiary means any corporation or other organization, whether incorporated or unincorporated, in which the company owns, directly or indirectly, any equity or other ownership interest. The owner of the property shall not act as their own contractor.

§ 5. Chapter 7 of the New York city fire code is amended by adding a new section FC 703.1.5 to

read as follows:

703.1.5 Inspection criteria, processes, and reporting procedures. Inspections conducted pursuant to this section shall comply with the following provisions:

1. A building engineer or other person knowledgeable with the building system must accompany the inspector during the inspection and testing in order to provide building and systems access and information.

2. If an inspection or test reveals compliance with requirements of this section, the person performing the inspection or test shall execute a compliance certification which shall verify such compliance, and provide the name of the individual(s) conducting the inspection or test and that person's employer, the name of the building owner and address of the property, the location of all smoke dampers and fire dampers inspected or tested, and the date of the inspection or test.

3. In the event an inspection or test reveals deficiencies in smoke dampers, fire dampers, or combination fire and smoke dampers, the person(s) who conducted the inspection or test shall prepare a deficiency report for the building owner identifying the nature of the deficiency and reasons for non-compliance. The building owner shall, within 120 days of the date of the inspection or test, take necessary steps to remedy the defects identified in the report and come in compliance with the applicable NFPA standards.

4. In addition to identifying the location and nature of the deficiency, the report shall contain the name of the individuals conducting the inspection or test and that person's employer, the name of the building owner, address of the property, the location of all Fire Dampers, Smoke Dampers, and Combination Fire and Smoke Dampers inspected or tested, and the date of the inspection or test.

5. Records of all smoke, fire, and combination fire and smoke damper inspections, tests, servicing, and other maintenance required by this code, the rules or the reference standards shall be maintained in accordance with FC 107.7.

6. The building owner shall post a notice of verification of the testing and inspection of fire dampers, smoke dampers, and combination fire and smoke dampers in the outside lobby window of the building or other area clearly visible to the public. The verification shall state the address of the building and the date of the last fire damper inspection, smoke damper inspection, and the date that each inspection expires. Such verification shall be on a form approved by the department.

7. Violations of this section shall be subject to summons and penalties pursuant to section 109-03 of title 3 of the rules of the city of New York. Where testing and inspection are less than three months out of date, a summons shall be issued, but no penalties shall accrue if the violation is corrected within 120 calendar days. If the violation is not corrected within 120 calendar days, a penalty shall be issued pursuant to section 109-03 of title 3 of the rules of the city of New York and each subsequent day that the violation remains uncorrected shall be treated as a new and separate violation subject to additional penalties. Where testing and inspection are more than three months out of date, a summons and penalty shall be issued pursuant to section 109-03 of title 3 of the rules of the city of New York, and the owner shall have 120 calendar days after issuance of the summons to correct the violation, after which each day the violation remains uncorrected shall be treated as a new and separate violation subject to additional penalties. Where a deficiency report is not remedied within 60 days, a summons and penalty shall be issued pursuant to section 109-03 of title 3 of the rules of the city of New York and the owner shall have 60 additional calendar days to correct the violation, after which each day the violation remains uncorrected shall be treated as a new and separate violation subject to additional penalties. Where testing and inspection are more than one year out of date or a deficiency report is not remedied within 180 days, the violation shall be enforced as a violation under section 109-03 of title 3 of the rules of the city of New York.

§ 6. Section FC 909.1.1 of the New York city fire code is amended to read as follows:

909.1.1 Smoke control system maintenance. Smoke control systems shall be maintained in good working order. Periodic testing, inspection and other maintenance shall be performed in accordance with the manufacturer’s instructions, most recent published version of NFPA standard 92, the most recently adopted version of NFPA 80 and 105, and FC 909.1.1.1 through [909.1.1.3] 909.1.5. Testing of Smoke Control Systems shall include tests to determine that airflow quantities and pressure differences are code compliant, including at the following locations: (1) across smoke barrier openings; (2) at the air makeup supplies; and (3) at smoke exhaust equipment.

§ 7. Chapter 9 of the New York city fire code is amended by adding new sections FC 909.1.1.4 and 909.1.1.5 to read as follows:

909.1.1.4. Inspector qualifications. Inspections and tests under this Section shall be performed by a qualified contractor that meets all the following criteria:

1. A contractor that provides inspections and testing of HVAC smoke control systems shall hold an ICB smoke control systems contractor certification or equivalent certification from an organization that has been accredited under the ISO/IEC 17024 personnel certification standard in HVAC smoke control systems inspections.
2. For inspection and testing of HVAC smoke control systems, a contractor shall employ only a skilled and trained workforce. For the purposes of this section, “skilled and trained workforce” means a workforce not less than 60 percent of which is composed of graduates of an apprenticeship program approved by the New York State Department of Labor.
3. For inspection and testing of HVAC smoke control systems a contractor shall employ technicians who hold an ICB smoke control systems technician certification or equivalent certification from an organization that has been accredited under the ISO/IEC 17024 personnel certification standard in HVAC smoke control systems inspections.
4. All technicians performing inspections and testing of HVAC smoke control systems must be employed by an independent contractor that is not a subsidiary of the building owner or building management company. An independent contractor shall be defined as not owning or being directly managed by the building owner(s), or immediate family member of the building being inspected. For the purposes of this section, a subsidiary means any corporation or other organization, whether incorporated or unincorporated, in which the company owns, directly or indirectly, any equity or other ownership interest. The owner of the property shall not act as their own contractor.

909.1.1.5 Inspection criteria, processes, and reporting procedures. Inspections conducted pursuant to this section shall comply with the following provisions:

1. A building engineer or other person knowledgeable with the building system must accompany the inspector during the inspection and testing in order to provide building and systems access and information.
2. In the event an inspection or test reveals deficiencies in the Smoke Control Systems the person

(s) who conducted the inspection or test shall prepare a deficiency report for the building owner identifying the nature of the deficiency and reasons for non-compliance. The building owner shall, within 120 days from the date the report is issued, take necessary steps to remedy the defects identified in the report and come into compliance with code requirements.

3. In addition to identifying the location and nature of the deficiency, the report shall contain the name of the individuals conducting the inspection or test and that person's employer, the name of the building owner, address of the property, the location of all Smoke Control Systems inspected or tested, and the date of the inspection or test.

4. Records of all smoke control system inspections, tests, servicing and other maintenance required by this code, the rules or the reference standards shall be maintained in accordance with FC107.7.

5. The building owner shall post a notice of verification of the testing and inspection of Smoke Control Systems in the outside lobby window of the building or other area clearly visible to the public. The verification shall state the address of the building and the date of the last smoke control system inspection, and the date that each inspection expires. Such verification shall be on a form approved by the department.

6. Violations of this section shall be subject to summons and penalties pursuant to section 109-03 of title 3 of the rules of the city of New York. Where testing and inspection are less than three months out of date, a summons shall be issued, but no penalties shall accrue if the violation is corrected within 120 calendar days. If the violation is not corrected within 120 calendar days, a penalty shall be issued pursuant to section 109-03 of title 3 of the rules of the city of New York and each subsequent day that the violation remains uncorrected shall be treated as a new and separate violation subject to additional penalties. Where testing and inspection are more than three months out of date, a summons and penalty shall be issued pursuant to section 109-03 of title 3 of the rules of the city of New York, and the owner shall have 120 calendar days after issuance of the summons to correct the violation, after which each day the violation remains uncorrected shall be treated as a new and separate violation subject to additional penalties. Where a deficiency report is not remedied within 60 days, a summons and penalty shall be issued pursuant to section 109-03 of title 3 of the rules of the city of New York and the owner shall have 60 additional calendar days to correct the violation, after which each day the violation remains uncorrected shall be treated as a new and separate violation subject to additional penalties. Where testing and inspection are more than one year out of date or a deficiency report is not remedied within 180 days, the violation shall be enforced as a violation under section 109-03 of title 3 of the rules of the city of New York.

§ 8. Section FC 909.2.1 of the New York city fire code is amended to read as follows:

909.2.1 Post-fire smoke purge system maintenance. Post-fire smoke purge systems shall be maintained in good working order in accordance with the most recently published version of NFPA 204. A record of inspections and tests shall be maintained in accordance with FC107.7.

§ 9. Chapter 9 of the New York city fire code is amended by adding new sections FC 909.2.1.1, and 909.2.1.2 to read as follows:

909.2.1.1 Inspector qualifications. Inspection, maintenance, and testing of mechanical smoke-exhaust system under this section shall be performed by a qualified contractor that meets all the following criteria:

1. A contractor that provides inspections and testing of post-fire smoke purge systems shall hold an ICB smoke control systems contractor certification or equivalent certification from an organization that has been accredited under the ISO/IEC 17024 personnel certification standard in HVAC smoke control systems inspections.
2. For inspection and testing of post-fire smoke purge systems, a contractor shall employ only a skilled and trained workforce. For the purposes of this section, a “skilled and trained workforce” means a workforce not less than 60 percent of which is composed of graduates of an apprenticeship program approved by the New York State Department of Labor.
3. For inspection and testing of post-fire smoke purge systems a contractor shall employ technicians who hold an ICB smoke control systems technician certification or equivalent certification from an organization that has been accredited under the ISO/IEC 17024 personnel certification standard in HVAC smoke control systems inspections.
4. All technicians performing inspections and testing of post-fire smoke purge systems must be employed by an independent contractor that is not a subsidiary of the building owner or building management company. An independent contractor shall be defined as not owning or being directly managed by the building owner(s), or immediate family member of the building being inspected. For the purposes of this section, a subsidiary means any corporation or other organization, whether incorporated or unincorporated, in which the company owns, directly or indirectly, any equity or other ownership interest. The owner of the property shall not act as their own contractor.

909.2.1.2 Inspection criteria, processes, and reporting procedures. Inspections conducted pursuant to this section shall comply with the following provisions:

1. A building engineer or other person knowledgeable with the building system must accompany the inspector during the inspection and testing in order to provide building and systems access and information.
2. In the event an inspection or test reveals deficiencies in the post-fire purge system the person (s) who conducted the inspection or test shall prepare a deficiency report for the building owner identifying the nature of the deficiency and reasons for non-compliance. The building owner shall, within 120 days from the date the report is issued, take necessary steps to remedy the defects identified in the report and come into compliance with code requirements.
3. In addition to identifying the location and nature of the deficiency, the report shall contain the name of the individuals conducting the inspection or test and that person’s employer, the name of the building owner, address of the property, the location of all post-fire purge Systems inspected or tested, and the date of the inspection or test.
4. Records of all post-fire purge inspections, tests, servicing and other maintenance required by this code, the rules or the reference standards shall be maintained in accordance with FC107.7.
5. The building owner shall post a notice of verification of the testing and inspection of post-fire purge Systems in the outside lobby window of the building or other area clearly visible to the public. The verification shall state the address of the building and the date of the last post-fire purge system inspection, and the date that each inspection expires. Such verification shall be on

a form approved by the department.

6. Violations of this section shall be subject to summons and penalties pursuant to section 109-03 of title 3 of the rules of the city of New York. Where testing and inspection are less than three months out of date, a summons shall be issued, but no penalties shall accrue if the violation is corrected within 120 calendar days. If the violation is not corrected within 120 calendar days, a penalty shall be issued pursuant to section 109-03 of title 3 of the rules of the city of New York and each subsequent day that the violation remains uncorrected shall be treated as a new and separate violation subject to additional penalties. Where testing and inspection are more than three months out of date, a summons and penalty shall be issued pursuant to section 109-03 of title 3 of the rules of the city of New York, and the owner shall have 120 calendar days after issuance of the summons to correct the violation, after which each day the violation remains uncorrected shall be treated as a new and separate violation subject to additional penalties. Where a deficiency report is not remedied within 60 days, a summons and penalty shall be issued pursuant to section 109-03 of title 3 of the rules of the city of New York and the owner shall have 60 additional calendar days to correct the violation, after which each day the violation remains uncorrected shall be treated as a new and separate violation subject to additional penalties. Where testing and inspection are more than one year out of date or a deficiency report is not remedied within 180 days, the violation shall be enforced as a violation under section 109-03 of title 3 of the rules of the city of New York.

§ 10. Chapter 9 of the New York city building code is amended by adding a new section 901.5.1

to read as follows:

901.5.1 Maintenance of fire dampers, smoke dampers, combination fire/smoke dampers, smoke control systems, and purge systems shall be maintained and periodically tested in accordance with the New York city Fire Code sections 703.1, 909.1, and 909.2.

§ 11. Title 15 of the administrative code of the city of New York is amended by adding a new section 15-148 to read as follows:

§ 15-148. Annual report on smoke damper inspections. a. No later than July 31, 2024 and annually thereafter, the commissioner shall submit to the mayor and the speaker of the council, and shall post conspicuously on the department's website, an annual report regarding inspection rates of smoke dampers in buildings in the city of New York.

b. The report shall include, but not be limited to, the following information for the prior year:

1. The number of buildings inspected;

2. The location of each building inspected;
 3. The number of working smoke dampers;
 4. The number of faulty smoke dampers; and
 5. The rate of remediation in fixing faulty smoke dampers;
- § 12. This local law takes effect 120 days after becoming law.

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