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Jurisdiction Type: Municipal
Municipality: City of New York
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Title: City of New York Executive Order 230 & Executive Order 233
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Abstract

Following Executive Order 225 (extending the State of Emergency caused by Hurricane Sandy) and the release of FEMA's new advisory base flood elevation maps for areas impacted by Sandy (containing the most up-to-date information on flood hazard zones and necessary buildings heights to prevent flood damage) New York City Mayor Michael Bloomberg issued Executive Order 230. Executive Order 230 suspends height limits and other restrictions for new construction and reconstruction in areas devastated by Hurricane Sandy. Additionally, as part of the recovery and rebuilding effort New York City adopted new rules in the building code to increase flood-proofing requirements and to increase the required minimum flood-proofing elevation so damaged buildings and other new construction will withstand greater flood events. Prior to suspension, New York City Zoning required all new construction or reconstruction comply with the specific zoning regulations for the zone and with building codes. Although these are seemingly commonplace requirements the new building requirements along with the existing zoning could have prevented buildings from being built or rebuilt at elevations consistent with FEMA's new recommended base flood elevations. For example, techniques such as building on columns would raise the building's height and without the suspension of zoning height limitation place a significant onus on people attempting to build or rebuild in these impacted areas.

Using an Executive Order to suspend zoning requirements is an innovative method to provide short term relief for those affected by natural disasters. Passing an Executive Order during a State of Emergency is far easier than enacting a zoning amendment. An Executive Order only requires action on the part of the executive and does not have the same procedural process requirements, which may present and undue delay for those impacted by disasters. However, a simple suspension of requirements through Executive Order is only a short-term solution; the underlying zoning should be revised to keep the zoning current and to promote orderly development consistent with the community's plan for development. This Executive Order recognizes the limitations of an Executive Order as a temporary solution and as a result requires renewal every five days.

Resource

EXECUTIVE ORDER NO. 230 EMERGENCY ORDER TO SUSPEND ZONING PROVISIONS TO FACILITATE RECONSTRUCTION IN ACCORDANCE WITH ENHANCED FLOOD RESISTANT CONSTRUCTION STANDARDS

January 31, 2013

WHEREAS, Executive Order 225, issued January 26, 2013, contains a proclamation extending a state of emergency in the City of New York, and such proclamation remains in effect for a period not to exceed thirty days or until rescinded, whichever occurs first; and

WHEREAS, on October 26, 2012, the Governor issued a declaration of emergency for all counties in the State of New York, including the City of New York, and such declaration remains in effect for a period not to exceed six months or until rescinded, whichever occurs first; and

WHEREAS, a severe storm (“Hurricane Sandy”) hit New York City recently, causing heavy flooding, power outages, property damage, and disruption of public transportation and other vital services; and

WHEREAS, the effects of Hurricane Sandy have significantly damaged or destroyed many one- and two-family homes, as well as a number of multiple dwellings and other buildings, resulting in the displacement of residents, businesses and community facilities; and

WHEREAS, the reconstruction and re-occupancy of such buildings is critical to disaster recovery and it is essential that reconstruction proceed in a manner that incorporates enhanced flood risk prevention standards reflective of best practices; and

WHEREAS, on January 28, 2013, the Federal Emergency Management Agency (“FEMA”) published Advisory Base Flood Elevation Maps for portions of New York City, and FEMA will shortly publish Advisory Base Flood Elevation Maps for the remainder of New York City, providing more up to date information on safe elevations for flood resistant construction; and

WHEREAS, pursuant to the emergency rulemaking procedures of the City Administrative Procedure Act, New York City Charter Section 1043 (i)(1), the Department of Buildings promulgated an emergency rule, 1 RCNY 3606-04, to amend reference standard American Society of Civil Engineers (“ASCE”) 24 as incorporated into Appendix G (“Flood Resistant Construction”) of the New York City Building Code (hereinafter “Appendix G”) and relating to the level above the base flood elevation to which new, substantially damaged or substantially improved buildings must be designed and constructed, and such rule is effective as of such date; and

WHEREAS, current zoning height restrictions and other limitations pose significant practical difficulties for the reconstruction of affected buildings in consistent with elevations shown on the Advisory Base Flood Elevation Maps and the timeframe required for adoption of amendments to the New York City Zoning Resolution (“Zoning Resolution”) and would substantially impede rapid reconstruction in accordance with such Maps ; and

WHEREAS, current zoning limits the reconstruction and continuation in use of retail businesses located in residential districts, as well as the reconstruction of other non-conforming and non-complying buildings; and

WHEREAS, the above-described provisions of the Zoning Resolution will prevent, hinder or delay disaster recovery, requiring the adoption of emergency measures; and

WHEREAS, the Department of City Planning will proceed forthwith to prepare and forward into the public review process proposed amendments to the Zoning Resolution that will make permanent the provisions of this Executive Order;

NOW, THEREFORE, it is hereby ordered:

§ 1. The provisions of this Order shall apply only with respect to buildings:

a. that are located within the Advisory Limit of the 1% Annual Chance Flood Hazard Area as delineated on FEMA Advisory Base Flood Elevation Maps;

b. for which construction must be, or is otherwise proposed to be, performed fully in accordance with the flood resistant construction provisions of Appendix G that would apply if such building were hereafter erected; and

c. for which construction utilizes as the Design Flood Elevation for the purposes of the Tables in Appendix G, the Zoning Design Flood Elevation in Section two of this Order; provided, further, that:

i. such construction shall be made under the provisions governing the more restrictive of the area of special flood hazard applicable to the building location shown on the FEMA Advisory Base Flood Elevation Map and the FEMA FIRMs 360497/FEMA FIS 360497;

ii. in V-Zones, the minimum elevation below which flood-damage-resistant materials must be used shall be the sum of:

(A) the Zoning Design Flood Elevation and

(B) the difference between the Design Flood Elevation for flood-damage-resistant materials in Table 5-1, and the Design Flood

Elevation for V Zones shown in Table 4-1, for the applicable structural occupancy category of ASCE 24, as amended by 1 RCNY 3606-04;

iii. in V Zones, the minimum elevation of utilities and attendant equipment shall be the sum of: (A) the Zoning Design Flood Elevation and (B) the difference between the Design Flood Elevation for utilities and attendant equipment in Table 7-1, and the Design Flood Elevation for V Zones shown in Table 4-1, for the applicable structural occupancy category of ASCE 24, as amended by 1 RCNY 3 606-04; and

iv. for all one- or two-family residences located in A Zones, all enclosures below the Zoning Design Flood Elevation with a vertical clearance of five feet or greater, except for wet-flood proofed enclosures for stairs and vestibules, shall be of an open lattice type construction.

d. Notwithstanding the foregoing, the provisions of this Order shall apply where the building location is located within an area of special flood hazard as established by Section G102.2 of Appendix G, but is not located within advisory limit of the 1% Annual Chance Flood Hazard Area as delineated on the FEMA Advisory Base Flood Elevation Maps, in which case this Order shall apply where construction is consistent with flood-resistant construction provisions of Appendix G, including the requirements therein governing the Base Flood Elevation and Design Flood Elevation that would apply if such building were hereafter erected.

§2. The “Zoning Design Flood Elevation” is defined for purposes of this Order as an elevation that is the higher of:

a. Any applicable Design Flood Elevation in accordance with FEMA FIRMs 360497/FEMA FIS 360497 and Appendix G, including ASCE 24 as amended by 1 RCNY 3606-; and

b. An elevation selected by the applicant that is:

i. no less than the 1% Advisory Base Flood Elevation for the building location shown on the FEMA Advisory Base Flood Elevation Maps; and

ii. no higher than the elevation which is the sum of:

(A) the 1% Advisory Base Flood Elevation for the building location shown on the FEMA Advisory Base Flood Elevation Maps; and

(B) the difference between the Design Flood Elevation and the Base Flood Elevation for the applicable structural occupancy category as shown in Tables 2-1 (A-Zones) or 4-1 (V-Zones) of ASCE 24, as amended by I RCNY 3606-04. Notwithstanding the foregoing, the Zoning Design Flood Elevation may be an elevation that is less than the

1% Advisory Base Flood Elevation for the building location shown on the FEMA Advisory Base Flood Elevation Maps, where the Department of Buildings has determined that a reduction is warranted based on more recent, detailed information provided to the City by FEMA.

§3. Pursuant to the powers vested in me by Paragraph g of Subdivision 1 of Section 24 of the New York Executive Law to suspend any local laws, ordinances, or regulations, or parts thereof, which may prevent, hinder, or delay necessary action in coping with a disaster or recovery therefrom whenever the Governor has declared a State Disaster Emergency, I hereby suspend, subject to the provisions of sections one and two of this order, provisions of the Zoning Resolution as described in this Section and set forth in the attached list:

a. The following shall apply to single-family and two-family residences existing on October 28, 2012:

i. All provisions of the Zoning Resolution establishing building height limitations, minimum distance requirements between legally required windows and walls or lot lines, yard requirements, and, for buildings that were non-complying buildings as of October 28, 2012, the provisions prohibiting new non-compliances, or prohibiting an increase in the degree of existing non-compliances, are suspended in all cases insofar as and to the extent required to:

A. vertically elevate such a residence, or vertically elevate a reconstruction of such a residence, in order to raise the lowest floor level containing lawful habitable space located at or above the adjoining grade as of October 28, 2012, such that

(1) for residences in A zones, such lowest floor may be elevated to the Zoning Design Flood Elevation, as defined in Section two of this Order, and

(2) for residences in V Zones, the lowest horizontal structural member supporting such lowest floor may be elevated to the Zoning Design Flood Elevation, as defined in Section two of this Order; and

B. reposition a residence elevated pursuant to Subparagraph (A) of this Paragraph under the conditions set forth in Subparagraph (B) of Paragraph (ii) of this Subdivision.

ii. The suspensions of the Zoning Resolution pursuant to Paragraph (i) of this Subdivision are subject to the following conditions:

A. the building footprint shall have dimensions no greater than the footprint that existed on October 28, 2012;

B. where a building is repositioned to reduce an encroachment into a front yard by up to three feet in depth in order to accommodate stair access, such building may also be repositioned to newly encroach or further encroach into required yards at the rear of the building by up to an equivalent depth, provided that a distance of eight feet or more, measured perpendicular to the rear wall of the building, shall be maintained between such new encroachment and all other residences on the same or adjoining zoning lots; and

C. elevating or repositioning such building shall not result in a new floor area non-compliance, nor increase the degree of any pre-existing floor area non-compliance.

b. The following provisions shall apply for all buildings, whether existing, new, altered, or enlarged: All provisions of the Zoning Resolution establishing building height limitations (including height limits for building features such as ground floor transparencies and accessory signs) based on measurement from a datum are suspended, insofar and to the extent that such limitations may be exceeded by the difference between the applicable datum and the Zoning Design Flood Elevation. Such data include, without limitation: front yard line level, base plane, base flood elevation, street wall line level, curb level, street line, and adjacent grade, as such terms are defined or used by the Zoning Resolution. [For non-complying buildings or portions thereof see also Paragraph (i) of Subdivision (c) of this Section.]

ii. For residential buildings located in districts governed by the bulk regulations of R1-2A, R2A, R2X, R3, R4 or R5 Districts, the provisions of Section 12-10 of the Zoning Resolution regulating the amounts of floor space for mechanical equipment that must be included in, or may be excluded from, floor area calculations are suspended insofar and to the extent that the Commissioner of Buildings issues a written determination that an amount of floor space for mechanical equipment need not be included in floor area calculations on the basis that such floor space is necessary for mechanical equipment and the mechanical equipment is to be located at or above the Zoning Design Flood Elevation.

iii. For single-family and two-family residences, all provisions of the Zoning Resolution governing permitted obstructions in rear or side yards or open spaces are suspended, insofar as and to the extent that an accessory emergency generator shall be allowed in such a yard or open space, provided that such generator is in compliance with all other applicable codes, rules and regulations, is located at least five feet from a lot line, and is raised to the Zoning Design Flood Elevation.

c. The following provisions shall apply to non-complying buildings, or portions thereof, existing on October 28, 2012, other than single family and two-family residences: All provisions of the Zoning Resolution that prohibit increases in the

degree of non-compliance through reconstruction are suspended, insofar and to the extent that an increase in height equal to the difference between the applicable datum and the Zoning Design Flood Elevation would result in any non-compliance, provided that:

(A) such reconstruction on the zoning lot does not result in buildings that extend beyond the footprint of buildings existing on October 28, 2012; and

(B) elevating a building shall not result in a new floor area non-compliance, nor increase the degree of any pre-existing floor area non-compliance.

ii. The provisions of Section 54-4 1 of the Zoning Resolution that require that reconstruction of non-complying buildings or other structures damaged or destroyed by any means to the extent of 75 percent or more of their total floor area, other than single-family and two-family residences, shall be made in accordance with the applicable bulk regulations, are suspended, insofar as and to the extent that reconstruction of buildings damaged to an extent of 75 percent or more of their floor area due to the effects of Hurricane Sandy may be reconstructed to the pre-existing degree of non-compliance and in addition, with an increase in height in accordance with the provisions of Paragraph (i) of this Subdivision.

d. The following provisions shall apply to non-conforming uses existing on October 28, 2012: The provisions of Sections 52-53 and 52-54 of the Zoning Resolution, and the provisions of Section 52-22 in connection therewith, that restrict reconstruction, structural alteration, and continuance in use of non-conforming uses damaged or destroyed due to the effects of Hurricane Sandy to the extent set forth in such Sections, are suspended, insofar as and to the extent that such non-conforming uses may be reconstructed, structurally altered, and continued in use, provided that this Paragraph shall not apply to:

A. non-conforming residential uses located in C8 or manufacturing districts; and

B. non-conforming manufacturing uses located in residential or commercial districts other than C8 districts.

e. The following provisions shall apply to buildings containing residences and structures accessory thereto in existence as of October 28, 2012 in the Special South Richmond District that were damaged due to the effects of Hurricane Sandy: The provisions of Section 107-22 et seq. of the Zoning Resolution are suspended, insofar and to the extent that, as determined in writing by the Commissioner of Buildings, a development:

A. does not result in buildings or other structures that extend beyond the footprint of buildings or other structures existing on October 28, 2012; and

B. would not result in an increase in impervious surfaces on the zoning lot, In addition, the provisions of Section 107-22 et seq. of the Zoning Resolution are suspended, insofar and to the extent that the Commissioner of Buildings may approve a site alteration that such Commissioner determines in writing is the minimum necessary to enable the reconstruction of the building.

ii. The provisions of Section 107-23 of the Zoning Resolution are suspended, insofar and to the extent that, as determined in writing by the Commissioner of Buildings a development on the zoning lot does not result in buildings or other structures that extend beyond the footprint of buildings or other structures existing on October 28, 2012. Such suspension shall not affect the terms of a certification previously made by the City Planning Commission pursuant to Section 107-23.

f. The following provisions apply to buildings existing as of October 28, 2012, located within waterfront blocks, that sustained substantial damage, as defined in Appendix G, due to the effects of Hurricane Sandy: The provisions of 62-50 through 62-59 of the Zoning Resolution (General Requirements for Visual Corridors and Waterfront Public Access Areas) and implementing provisions related thereto are suspended for such buildings that did not exceed 20,000 square feet of floor area prior to Hurricane Sandy, provided that, as determined in writing by the Commissioner of Buildings:

A. the dimensions of the building footprint are no greater than the footprint that existed on October 28, 2012;

B. if such building is repositioned on the lot, such repositioning does not newly encroach, or further encroach into a required yard, visual corridor or existing public access area; and

C. the reconstruction does not result in a change of use from that existing on October 28, 2012.

§4. All terms used in this Order that are defined in Section 12-10 or any other provisions of the Zoning Resolution affected by this Order shall have the meaning set forth in or as used in such provisions.

§5. This Order shall take effect immediately. It shall remain in effect for five (5) days unless it is terminated or modified at an earlier date.

Michael R. Bloomberg
Mayor /

LIST OF SUSPENDED ZONING RESOLUTION PROVISIONS

The suspension of the sections of the Zoning Resolution or portions thereof listed below applies only to buildings that meet the conditions of Section 2 of this Executive Order.

1. Provisions Suspended by Subdivision (a) of Section 3 of this Executive Order

Zoning Resolution Paragraph Section

23-45
23-46 1
23-47 et seq
23-5 1
23-53 et seq
23-54 et seq
23-631 a
23-631 b
23-631 c
23-631 d
23-631 e
23-631 f
23-631 g
23-631 h(4)
23-632 a
23-633
23-64
23-661
23-663
23-69 1
23-692
23-693
23-7 11
23-86
34-24 a
35-24
35-34
35-61 a
35-61 b
54-41
62-324 b
62-341 a(3)
62-351 b
62-4 11

Zoning Resolution Paragraph Section

94-10
111-20 (c)

112-103
123-66
128-3 0
13 1-40
131-421 a(2)
131-423 a
131-431 a(1)
131-432 a
131-441 a(1)
131-443 a
131-45 a

2. Provisions Suspended by Paragraph (i) of Subdivision (b) of Section 3 of this Executive Order

Zoning Resolution Paragraph Section

23-44 b(5)
23-44 b(S)
23-44 b (5)
23-631 a
23-631 b
23-631 c
23-631 d
23-631 e
23-631 f
23-631 g
23-631 h(3)
23-631 h(4)
23-632 a
23-633
23-634
23-64
23-651 b(2)
23-66 1
23-662
23-663
23-69 1
23-692
23-693

Zoning Resolution Paragraph Section

23-7 11
23-86
24-12
24-164 a
24-33 b

24-52 1
24-522 a
23-53
24-55 1
24-552 a
24-591
33-23
33-431 a
33-432
33-441
33-442
33-491
34-24 a
35-24
35-34
35-61 a
35-61 b
43-23 b
43-43
43-44
43-49
43-61 c
62-324 b
62-341 a(3)
62-342
62-351 b
62-411
63-22
63-23
94-10
111-20 (c)
112-103
112-104
116-13
123-66
125-12
125-30
128-30

Zoning Resolution Paragraph Section

128-35 (e)
13 1-15
13 1-40
131-421 a(2)
131-423 a
131-431 a(1)

131-432 a
131-441 a(1)
131-443 a
131-45 a
131-47 b(2)

3. Provisions Suspended by Paragraph (ii) of Subdivision (b) of Section 3 of this Executive Order

Zoning Resolution Paragraph Section
12-10 Definition of "floor area," paragraphs (m) and(8)

4. Provisions Suspended by Paragraph (iii) of Subdivision (b) of Section 3 of this Executive Order

Zoning Resolution Paragraph Section
23-44

5. Provisions Suspended by Paragraph (i) of Subdivision (c) of Section 3 of this Executive Order

Zoning Resolution Paragraph Section
52-5 1
52-55
54-41
54-42

6. Provisions Suspended by Paragraph (ii) of Subdivision (c) of Section 3 of this Executive Order

Zoning Resolution Paragraph Section
54-41 ,
54-42

7. Provisions Suspended by Subdivision (d) of Section 3 of this Executive Order

Zoning Resolution Paragraph Section
52-22
52-53
52-54

8. Provisions Suspended by Subdivision (e) of Section 3 of this Executive Order

Zoning Resolution Paragraph Section
107-22 et seq

107-23

9. Provisions Suspended by Subdivision (1) of Section 3 of this Executive Order

Zoning Resolution Paragraph Section

62-50

62-5 1 et seq

62-52

62-53

62-54

62-55

62-5 6 et seq

62-5 7 et seq

62-58

62-59