

Introduced by: Mr. Cartier, Ms. Kilpatrick,  
Mr. Sheldon, Ms. George  
Date of introduction: July 11, 2023

**ORDINANCE NO. 23-094**

**AMENDING NEW CASTLE COUNTY CODE CHAPTER 6 (“BUILDING CODE”)  
AND CHAPTER 7 (“PROPERTY MAINTENANCE CODE”)  
TO ESTABLISH ROUTINE INSPECTIONS  
FOR CERTAIN COMMON INTEREST COMMUNITY BUILDINGS,  
INCLUDING CONDOMINIUMS, IN NEW CASTLE COUNTY**

**WHEREAS**, failing building infrastructure in common interest communities, like condominiums, can lead to loss of life and personal property and serious injuries; and

**WHEREAS**, structural failures and building collapses in the United States continue to occur, including a recent deadly building collapse in Iowa and a balcony collapse in Sea Isle City, New Jersey, in addition to the catastrophic collapse of Champlain Towers South in Surfside, Florida that resulted in 98 deaths and dozens of serious injuries; and

**WHEREAS**, New Castle County, unfortunately, has its own examples of common interest community buildings that present concerns, including multi-story buildings located at Le Parc Condominiums, which are currently under observation by the County due to structural stability concerns; and

**WHEREAS**, the above have led growing concerns and increased attention on the structural and façade integrity of residential buildings in New Castle County; and

**WHEREAS**, currently there is no requirement that common interest community buildings undergo routine structural and façade inspections to ensure the safety of a building over its service life; and

**WHEREAS**, in light of the above, it is appropriate for New Castle County to enact procedures for inspecting, evaluating, and maintaining the structural and façade integrity of common interest community buildings, including condominiums, within the County; and

**WHEREAS**, routine inspections of these buildings and structures, especially older ones, will help avert structural and façade failures causing injury and loss of life; and

**WHEREAS**, a routine inspection program also will reduce life cycle costs by averting unexpected and expensive remediation or replacement projects; and

**WHEREAS**, New Castle County Council finds and declares that:

- a. The structural and facade integrity of residential common interest community buildings in New Castle County has become a growing concern, especially in the wake of the tragic collapse of a multifamily residential building in Florida.

- b. Given these concerns, it is appropriate for County Council to enact procedures for inspecting, evaluating, and maintaining the structural and façade integrity of certain residential common interest community buildings, including condominiums, within the County; and

**WHEREAS**, County Council has determined that the provisions of this Ordinance will substantially advance, and are reasonably and rationally related to, legitimate government interests by promoting the health, safety, prosperity, and welfare of the citizens of New Castle County.

**NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

Section 1. *New Castle County Code* Chapter 6 (“Building Code”), Article 2 (“Definitions”) and Article 4 (“Building Code”) are hereby amended by adding the material that is underscored, and deleting the material with strikethroughs, as set forth below.

**Chapter 6 – BUILDING CODE...**

**ARTICLE 2. – DEFINITIONS...**

**Section 6.02.001. – Definitions...**

*The following terms and related language as underlined are to be added alphabetically as new definitions to read as follows:*

...

*Corrective maintenance* means maintenance to be undertaken following the detection of deterioration of the primary load bearing system or the façade with the goal of remediating conditions reported by the design professional.

*Covered building*, for purposes of a structural inspection, means a residential building or a mixed use building that is, wholly or in part, residential and is a *common interest community building*, including, for example, a *condominium* or *cooperative building*, as such terms are defined in *Delaware Code* Title 25, Chapter 81 (the “Delaware Uniform Common Interest Ownership Act” or the “DUCIOA”), and has a *primary load bearing system* constructed of concrete, masonry, steel, or heavy timber, in addition to such buildings with structural slabs over unconditioned space.

*Covered building*, for purposes of a *façade* inspection, means a residential building or a mixed use building that is, wholly or in part, residential and is a *common interest community building*, including, for example, a *condominium* or *cooperative building* as such terms are defined in the DUCIOA, and is 4 stories or taller as measured from the lowest elevation of grade plane around the perimeter of the building, unless the building is 3 stories or less and has balconies or decks in which case only the balconies and decks on the second and third stories above grade plane shall be inspected.

*Covered building owner* means the owner, the owners’ authorized agent, or the person having charge or control of a *covered building*.

Façade means all areas on the exterior of a building including all exterior walls and exterior wall covering; without limitation, a façade further includes cornices, belt courses, corbels, terra cotta trim, wall facings, and other decorative features, parapets, architectural trim and embellishments, and all connected or attached appurtenances such as balconies and decks and attached handrails, fire escapes, chimneys, hanging air conditioners, and window washing and exterior maintenance systems.

Primary load bearing system ("PLBS") means the assemblage of structural components within a building comprised of columns, beams, and/or bracing that by contiguous interconnection form a path by which external and internal forces applied to the building are delivered to the foundation.

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#### **ARTICLE 4. – BUILDING CODE...**

##### **Sec. 6.04.002. – Amendments to the International Building Code...**

The following sections of the International Building Code, 2018 edition, are revised as follows...

Note: Although the International Building Code does not identify sections with a "B" designation, such a designation is utilized to avoid any confusion as to which Code the amendment relates...

#### **CHAPTER 17. SPECIAL INSPECTIONS AND TESTS...**

*CHAPTER 17, SPECIAL INSPECTIONS AND TESTS* is amended by adding the following underlined language into a newly added SECTION 1710 immediately following existing SECTION 1709, PRECONSTRUCTION LOAD TESTS, as indicated by underscore as follows:

**Section B1710 Structural and façade inspections for certain residential common interest community buildings, including condominiums.**

**Section B1710.1 General.** New Castle County Council finds that maintaining the structural and façade integrity of a building and structure throughout its service life is of paramount importance to ensure that buildings and structures do not pose a threat to the public health, safety, or welfare. Accordingly, County Council finds that requiring structural and façade inspections for common interest buildings, including condominiums, in the County is necessary to ensure that the buildings and occupants thereof are safe.

**Section B1710.1.1 Applicability.** Covered buildings, as defined in this Chapter, shall have a structural and façade inspection completed in accordance with Section B1710.2.

**Section B1710.2. Inspections: Pre-issuance of certificate of occupancy.**

1. When a construction application that proposes to create, amend, or modify the PLBS or façade of a covered building is filed with the Department, prior to issuance of a certificate of occupancy, the Department shall consult with the design professional chosen by the covered building owner to confirm that the PLBS and/or facade as-built is equivalent to the proposed design.
2. All inspections required herein shall be performed by or under the direction of a design professional. All structural and façade inspection reports shall be signed and sealed by the design professional. The design professional may be assisted by other professionals qualified in various special disciplines, including geotechnical and civil engineering practices, as needed to conduct the inspections required by this Section.
3. In conducting inspections pursuant to subsections 1. and 2., the design professional shall review the construction plans submitted with the construction application and issue a written report determining whether the PLBS and/or facade conforms with the building plans. If the design professional determines that the PLBS and/or the façade is not in conformance with the building plans, the applicant shall provide additional plans which show conformance with a modification to the PLBS and/or façade. No certificate of occupancy shall be issued until the design professional issues a written report that confirms that the construction of the PLBS and/or the façade of the building is equivalent with the approved construction plans.
4. The covered building owner shall record with the Recorder of Deeds Office signed and sealed structural and/or façade drawings, special inspection reports, and a maintenance plan, as provided in the Community Associations Institute Best Practices Report on Maintenance or a similar nationally-recognized guide, along with a copy of the certificate of occupancy within 10 business days of the issuance of the certificate of occupancy.
5. The creation of or repair, renovation, alteration, or modification of the PLBS and/or façade of a covered building required pursuant to any inspection shall be conducted by a design professional prior to issuance of a certificate of occupancy.
6. The Department may adopt rules and regulations consistent herewith as necessary and helpful to effectuate the intent and purpose of this Section, and such authority includes the ability of the Department to adopt forms necessary to further the intent and purposes of this Section.

Section 2. *New Castle County Code* Chapter 7 (“Property Maintenance Code”), Article 1 (“Standards for Property Maintenance”), Section 7.01.002 (“Amendments to the Property Maintenance Code”) are hereby amended by adding the material that is underscored and deleting the material as struck through, as set forth below.

**Chapter 7 – PROPERTY MAINTENANCE CODE...**

**ARTICLE 1. – STANDARDS FOR PROPERTY MAINTENANCE...**

## **Section 7.01.002. - Amendments to the Property Maintenance Code...**

Certain sections and subsections of the International Property Maintenance Code, 2018 edition, adopted in Section 7.01.001 and/or Section 7.01.002, are hereby added, deleted, amended, changed, and/or clarified as follows by underline and/or strikethrough. *Note:* Although the International Property Maintenance Code, 2018 edition, does not identify sections with a "PM" designation, such a designation is utilized to avoid any confusion as to what Code the amendment relates...

...

## **Section PM 202. DEFINITIONS**

The following words, terms, and phrases, when used in this Chapter, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

...

*The following terms and related language as underlined are to be added alphabetically as new definitions to read as follows:*

*Corrective maintenance* means maintenance to be undertaken following the detection of deterioration of the primary load bearing system or the façade with the goal of remediating conditions reported by the design professional.

*Covered building*, for purposes of a structural inspection, means a residential building or a mixed use building that is, wholly or in part, residential and is a *common interest community building*, including, for example, a *condominium* or *cooperative building*, as such terms are defined in *Delaware Code* Title 25, Chapter 81 (the "Delaware Uniform Common Interest Ownership Act" or the "DUCIOA"), and has a *primary load bearing system* constructed of concrete, masonry, steel, or heavy timber, in addition to such buildings with structural slabs over unconditioned space.

*Covered building*, for purposes of a *façade* inspection, means a residential building or a mixed use building that is, wholly or in part, residential and is a *common interest community building*, including, for example, a *condominium* or *cooperative building* as such terms are defined in the DUCIOA, and is 4 stories or taller as measured from the lowest elevation of grade plane around the perimeter of the building, unless the building is 3 stories or less in which case only the balconies and decks on the second and third stories above grade plane shall be inspected.

*Covered building owner* means the owner, the owners' authorized agent, or the person having charge or control of a *covered building*.

*Facade* means all areas on the exterior of a building including all exterior walls and exterior wall covering; without limitation, a façade further includes cornices, belt courses, corbels, terra cotta trim, wall facings, and other decorative features, parapets, architectural trim and embellishments, and all connected or attached appurtenances such as balconies and decks, and attached handrails, fire escapes, chimneys, hanging air conditioners, and window washing and exterior maintenance systems.

Grade plane means a reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building.

Primary load bearing system (“PLBS”) means the assemblage of structural components within a building comprised of columns, beams, and/or bracing that by contiguous interconnection form a path by which external and internal forces applied to the building are delivered to the foundation.

*Section PM 304. EXTERIOR STRUCTURE is amended by the addition of underlined language as follows, which is followed by the addition of new **Section PM 310** and its subparts as indicated by the following underlined language...*

...

Section PM 304.1 General. The exterior of a structure and the façade, which is defined in this Section, shall be maintained in good repair, structurally sound, and sanitary so as not to pose a threat to the public health, safety or welfare. “Covered buildings,” as defined in this Chapter, shall also comply with Section PM 310 of this Chapter.

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#### **SECTION PM 310 INSPECTIONS OF COVERED BUILDINGS.**

**Section PM 310.1 Primary load bearing system inspections.** For each covered building where the certificate of occupancy was issued prior to the effective date of this Section, an initial structural inspection of the PLBS, which shall include inspection of the foundation, shall be performed in accordance with the most recently published American Society of Civil Engineers (“ASCE”) *Guideline for Structural Condition Assessment of Existing Buildings* or other recognized equivalent standards by a design professional retained by the covered building owner to determine if conditions exist which potentially affect the structural capacity of the system within the earlier of:

- a. 2 years from the effective date of this Section; or
- b. 60 days after observable damage to the PLBS.
- c. If the design professional determines that unsafe and imminently dangerous conditions exist such that the observable damage compromises the structural integrity of the PLBS, immediate action is required. When such conditions are discovered, remedial steps to avoid harm to people or property shall be taken as required under Section PM 109.
- d. For each covered building where a certificate of occupancy was issued after the effective date of this Section, an initial structural inspection shall be undertaken by a design professional within 15 years of the effective date of this Section.

**Section PM 310.1.1 Structural Report.** After a design professional has performed a structural inspection pursuant to Section PM 310.1., the design professional shall issue a written report describing the condition of the PLBS. The structural report shall:

- a. Set forth with specificity all corrective maintenance or repairs necessary for the PLBS;
- b. Determine when the subsequent inspection of the PLBS shall be performed, based on Section 310.1.3.
- c. Be provided to the Code Official and the Department;
- d. Be prepared in accordance with protocol established by the most recently published ASCE or other recognized equivalent standards for the structural condition assessment of a covered building or a similar protocol by another nationally recognized structural engineering organization;
- e. Provide any other information or guidance necessary to maintain the structural integrity of a covered building;
- f. Provide additional detailed evaluations necessary to evaluate any observed concerns.
- g. The structural report shall be recorded with the Office of the Recorder of Deeds.

**Section PM 310.1.2. Corrective Maintenance.** If the design professional's report created pursuant to Section PM 310.1.1 concludes that corrective maintenance of the PLBS is needed, the report shall specify with reasonable detail the required corrective maintenance including the estimated timing and an engineering cost estimate for the work to be performed.

**Section PM 310.1.3. Subsequent Inspections.** Notwithstanding the design professional's initial inspection and report undertaken pursuant to this Section, subsequent structural inspections and reports shall be provided for as set forth by the design professional's preceding report as follows:

- a. The design professional will determine a reasonable period of time within which the next structural inspection will take place provided, however, that any subsequent inspection shall not occur:
  - 1) More than 10 years after a preceding inspection during the first 20 years following issuance of a certificate of occupancy; or
  - 2) More than 5 years after a preceding inspection if the covered building is more than 20 years old.
- b. The design professional shall review the preceding structural report prior to undertaking a subsequent structural inspection of the covered building. After the design professional completes this review and inspection, the design professional will then issue a subsequent structural report which shall:
  - 1) Make note of any new or progressive deterioration;
  - 2) Set forth the corrective maintenance required to address any new or progressive deterioration;
  - 3) Describe any additional, more detailed evaluations that must be performed to evaluate in greater detail any observed concerns; and

- 4) Be provided to the covered building owner, who shall undertake measures necessary to effectuate the corrective maintenance, including engaging the services of a design professional licensed by the State and qualified in structural repairs or maintenance to create plans or specifications to implement the corrective maintenance. The covered building owner shall cause any plans or specifications created pursuant to this Section to be filed with the Department.
- c. If the structural inspection by the design professional finds that there is no need for corrective maintenance, the written report will reflect this and shall be recorded with the Department and the Office of the Recorder of Deeds.
- d. Any written report issued by the design professional pursuant to this Section shall be provided to the covered building owner and shall be made available to any resident of the covered building upon request and posted in the building in a prominent location.

**Section PM 310.2. Façade inspections of covered buildings.**

Following the issuance of a certificate of occupancy after the effective date of this Section, an initial facade inspection of a covered building shall be undertaken in accordance with the most recently published ASCE Guideline for Condition Assessment of the Building Envelope or other recognized equivalent standards by a design professional retained by the covered building owner to review the condition of the façade to determine if conditions exist that potentially affect the integrity of the façade components that are supported by the PLBS as well as the potential for deterioration of moisture protection systems such as visually observable joints, flashings, and weeps that could lead to deterioration of the underlying building components. If conditions, which do not pose an immediate threat of harm to people or property which will be addressed under Section PM 109, are identified as a result of the inspection, a more detailed evaluation must be performed. The initial façade inspection must be performed within the earlier of:

- a. 5 years of the date on which the covered building was issued a certificate of occupancy; or
- b. 60 days after observable damage to the facade.
- c. If a covered building was issued a certificate of occupancy prior to the effective date of this Section, then an initial facade inspection shall be undertaken by a design professional within 2 years of the effective date of this Section.

**Section PM 310.2.1 Façade report.** After the design professional has performed an inspection following issuance of a certificate of occupancy pursuant to Section PM 310.2, the design professional shall issue a written report describing the condition of the facade. The inspection report shall:

- a. Identify with specificity any required corrective maintenance or repairs, not of an unsafe and imminently hazardous nature which shall be addressed immediately under Section PM 109, relating to both the condition of the façade as well as the weatherproofing of the façade;



- b. Identify when the next inspection of the façade shall be performed, but in no event shall a subsequent inspection occur more than 5 years after the initial inspection;
- c. Describe any additional evaluations necessary to further evaluate any observed conditions;
- d. Be provided to the Code Official and the Department;
- e. Be prepared in accordance with protocol established by the most recently published ASCE *Guideline for Condition Assessment of the Building Envelope*, or a similar protocol by another nationally recognized organization; and
- f. Provide any further information or guidance necessary to maintain the facade of a covered building.

**Section PM 310.2.2.** If the design professional determines that an unsafe and imminently dangerous condition exists, necessary remedial steps to avoid harm to people or property shall immediately be taken under Section PM 109.

**Section PM 310.2.3.** If the design professional's report created pursuant to Section PM 310.2.1 concludes that corrective maintenance of the façade is needed, which is not of an unsafe and imminently dangerous nature, the report shall specify with reasonable detail the required corrective maintenance including the estimated timing and an engineering cost estimate for the work to be performed.

**Section PM 310.2.4.** Notwithstanding the initial façade inspection and report undertaken pursuant to Sections PM 310.2 and PM 310.2.1., subsequent façade inspections and reports shall be provided for as set forth by the design professional's preceding report as follows:

- a. The design professional will determine a reasonable time period within which the subsequent inspection shall occur, provided, however, that any subsequent inspection shall occur within 5 years of the preceding inspection.
- b. The design professional shall review the preceding inspection report prior to undertaking subsequent inspections of the covered building. After the design professional completes this review and façade inspection, the design professional will then issue a subsequent inspection report which shall:
  - 1) Identify any new or progressive deterioration;
  - 2) Identify corrective maintenance necessary to address any new or progressive deterioration;
  - 3) Describe any further evaluations that must be performed to more fully assess any observed conditions; and
  - 4) Be provided to the covered building owner, who shall undertake measures necessary to effectuate the corrective maintenance, including, but not limited to, engaging the services of a design professional who is qualified in façade repairs or maintenance to create a plan to implement corrective maintenance. The covered building owner shall cause any plans or specifications created pursuant to this subparagraph to be filed with the Department.

- c. If, upon inspection, the design professional determines that corrective maintenance is not necessary, the written report shall reflect this determination and be filed with the Department.
- d. Written reports issued by the design professional pursuant to this Section shall be promptly provided to the covered building's owner and shall be made available to any resident of the covered building upon request and posted in a prominent location in the building.
- e. The facade report shall be recorded with the Office of the Recorder of Deeds.

**Section PM 310.3. Miscellaneous.**

Section PM 310.3.1. Costs incurred by the Department relating to inspections of a covered building made under this Section shall be recovered through a fee as determined by the Department, and shall be paid by the covered building owner.

Section PM 310.3.2. The Department may adopt rules and regulations consistent herewith as necessary and helpful to effectuate the intent and purpose of this Section, and such authority includes the ability of the Department to adopt forms necessary to further the intent and purposes of this Section.

Section 3. This Ordinance shall become effective after its adoption by County Council and approval by the County Executive, or as otherwise provided in 9 *Del. C.* § 1156.

Adopted by County Council of  
New Castle County on: 7/25/23

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President of County Council  
of New Castle County

Approved on:

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County Executive  
of New Castle County

**SYNOPSIS:** On June 24, 2021, Champlain Towers South, a 12-story condominium building built in 1981 in Surfside, Florida, collapsed, killing 98 people and seriously injuring many others. Although the exact cause of the building collapse remains under investigation, many reports have surfaced stating that the building had major structural issues. In addition, some experts argue that the repeal of a 2010 Florida law requiring that condominiums plan for certain repairs, may have contributed to this tragic building collapse.

Currently, there is no requirement in New Castle County to inspect the structural integrity and facades of common interest community buildings on a regular basis. Such inspections would help to ensure the safety of buildings and the occupants thereof. This ordinance would require that the structure and façade of *covered buildings* be inspected by a design professional such as a licensed engineer or architect during the building's

construction and post-construction phases.

In addition, this ordinance would require that a design professional review the construction plans submitted with a construction application, establish an inspection schedule to confirm that the primary load bearing system (“PLBS”) and the façade conform with the building plans, and issue a written report which expresses whether the PLBS conforms to the building plans.

A certificate of occupancy will not be issued until the design professional’s report confirms that the construction of the PLBS and the building façade are in conformance with the approved construction plans. Relatedly, the issuance of a certificate of occupancy would be precluded until all necessary repairs, renovations, alterations, or modifications to the covered building are made pursuant to the design professional’s report. Costs incurred by the Department as a result of required inspections would be recovered through a fee associated with the construction application as determined by the Department.

**FISCAL NOTE:** There is no immediate fiscal impact.