

NOTICE OF OPPORTUNITY TO COMMENT ON PROPOSED RULE 48 RELATING TO CONSTRUCTION SUPERINTENDENTS

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of Buildings by Section 643 of the New York City Charter (the "Charter"), and pursuant to Section 1043 of the Charter, that the Department of Buildings proposes to amend Section 13-11 of Title 1 of the Rules of the City of New York and to add a new Chapter 48 to Title 1. Matter underlined is new; matter [in brackets] is deleted.

A public hearing on the proposed rule amendments will be held at the Executive Offices of the Department of Buildings, 280 Broadway, 3rd Floor Conference Room New York, New York on March 1, 2007 at 1:00 p.m. Written comments regarding the proposed rule amendments may be submitted to Deborah Glikin, Assistant General Counsel, New York City Department of Buildings, General Counsel's Office, 280 Broadway, 7th Floor, New York, New York 10007, on or before March 8, 2007.

Written comments and an audio tape of oral comments received at the hearing will be available for public inspection, within a reasonable time after receipt, between the hours of 9:00 a.m. and 5:00 p.m. at the Office of the Commissioner, Executive Offices, Department of Buildings.

Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided at the hearing are asked to notify Angela Orridge at the foregoing address by February 12, 2007.

These proposed rule amendments were included in the agency's regulatory agenda.

Section 1. Title 1 of the Rules of the City of New York is amended by adding a new Chapter 48, to read as follows:

Chapter 48
Construction Superintendents

§ 48-01 General Provisions

(a) Definitions. For the purposes of this chapter, the following terms shall have the following meanings:

(1) Commissioner. The term “Commissioner” shall mean the Commissioner of the Department of Buildings or his or her designee.

(2) Construction superintendent. The term “construction superintendent” shall mean the individual responsible for those duties defined in §48-02 and registered in accordance with the provisions of §48-03.

(3) Days. The term “days” shall mean calendar days unless otherwise specified.

(4) Department. The term “Department” shall mean the Department of Buildings.

(5) Job. The term “job” shall mean a construction project that is the subject of one or more Department-issued demolition or new building permits for buildings up to and including 14 stories, or other structures or permit types as the Commissioner may designate, excluding one-, two- and three-family dwellings. Beginning one year after the effective date of this rule, the term “job” shall also apply to Department-issued demolition or new building permits for a one-, two- or three-family dwelling. The term “job” shall not include work for which a site safety manager has been designated pursuant to the Building Code and the Department’s rules.

(6) Permittee. The term “permittee” shall mean the individual applying for and receiving Department-issued job permits.

(b) Permits.

(1) Beginning on the 180th day following the effective date of this rule, no demolition or new building permit shall be issued or renewed for a job until the permittee or his or her representative has designated on the permit application form for the job a construction superintendent registered with the Department of Buildings in accordance with the provisions of §48-03 and, at the permittee’s option, up to three registered construction superintendents as alternates. Except where an architect or engineer is designated, the construction superintendent and the alternate(s) shall be employees of the permittee.

(2) Where a registered construction superintendent is relieved of duties by the permittee, all jobs on which the designated construction superintendent is relieved shall be stopped and the permits shall be deemed suspended unless he or she is replaced by another registered construction superintendent within a period of five (5) business days from the date the construction superintendent has been relieved of such duties.

§ 48-02 Duties.

(a) Availability and Compliance. A construction superintendent shall have responsibilities including, but not limited to:

(1) availability to the Department at all times, including emergencies; advising the Department of contact information and changes thereto; engaging in sound construction practices; acting in a reasonable and responsible manner to maintain a safe construction site; reporting immediately to the Department any fatality, injury to persons resulting in hospitalization or injury to property occurring on or adjacent to the job site that arises from the construction work; and

(2) to the extent that an architect or engineer is not responsible, assuring compliance with the applicable approved plans and the requirements of sections 27-132(b), 27-221, Subchapter 19 of Chapter 1 of Title 27 and all other provisions of the Administrative Code and rules and regulations as they relate to the duties of a person superintending work.

(b) Obligation to cooperate with inquiries. All registered construction superintendents shall cooperate in any investigation by the Department, or other city or law enforcement agency, into the activities at any job site under their supervision and shall provide prompt, accurate and complete responses to reasonable inquiries by the Department and other agencies about the conduct of such business.

(c) Limitation of Duties.

(1) An individual may be designated as construction superintendent for that number of jobs he or she can adequately supervise, to a maximum of twenty-five (25) at any one time.

(2) Upon request made by a registered construction superintendent, the Commissioner may approve an increase in the maximum number of jobs to be supervised to accommodate unique situations such as clustered housing.

(d) Obligation to comply with an order of the Commissioner. All registered construction superintendents shall comply with an order of the Commissioner.

(e) Obligation to advise Department of relief from duties.

(1) All registered construction superintendents shall immediately notify the Department in writing in a form or other manner determined by the Commissioner

upon being relieved of their duties in connection with any job permit on which they are designated.

(2) All permittees shall immediately notify the Department in writing in a form or other manner determined by the Commissioner upon the relief of duty of a construction superintendent who is designated upon a permit application filed by the permittee.

§ 48-03 Registration of Construction Superintendents.

(a) Effective Date. On or after the 180th day following the effective date of this rule, all individuals serving as construction superintendents for jobs must be registered with the Department, except as otherwise provided in subdivision f of this section.

(b) Registration with Department. The Department shall register all construction superintendents who meet the qualifications herein.

(c) Form and manner of registration. An application for registration shall be submitted in a form and manner determined by the Commissioner, including electronically, and provide such information as the Commissioner may require.

(d) Qualifications. The Department shall issue a Construction Superintendent registration to an individual who shall, at the time of his or her application, submit proof that he or she:

(1) is at least 18 years of age;

(2) is able to read and write the English language; and either

(3) is a New York State Licensed Professional Engineer or Registered Architect or a Department certified site safety manager and has completed within three years immediately preceding the application:

(i) a seven-hour Site Safety Manager course approved by the Department; or

(ii) a 10-hour Occupational Safety and Health Standards for the Construction Industry course; or

(4) within the 10 years immediately preceding the application, has worked for five years in the capacity of construction superintendent as verified by employer or union affidavit and has completed within three years immediately preceding the application:

(i) a seven-hour Site Safety Manager course approved by the Department; and

(ii) a 10-hour Occupational Safety and Health Standards for the Construction Industry course; or

(5) within the 10 years immediately preceding the application, has five years of on-site experience in the construction industry as a carpenter, mason, or inspector of building construction as verified by employer or union affidavit and has satisfactorily completed within three years immediately preceding the application:

(i) a 40-hour Site Safety Manager course approved by the Department; and

(ii) a 10-hour Occupational Safety and Health Standards for the Construction Industry course; or

(6) has satisfactorily completed such equivalent course(s) approved by the Commissioner, including those in electronic format.

(e) Audits. Applications for registration are subject to audit at any time. Such audit may also be made at any time upon receipt of complaints or evidence of falsification.

(f) Incumbent application deadlines.

(1) Notwithstanding the provisions of subdivision a of this section, where, within 12 months prior to the effective date of this rule, an individual has been designated on a demolition or new building permit as a construction superintendent, he or she may continue to perform the duties of a construction superintendent without complying with the foregoing if, within 180 days after the effective date of this rule, application for registration is made to the Department. In such case all necessary evidence, such as course completion certificates and employment affidavits, shall be furnished within one year of such effective date.

(2) One year after the effective date, all individuals serving as job construction superintendents must be registered as such with the Department. All incumbents who are not registered as of that date shall be deemed disqualified from that position and, unless replaced by a registered construction superintendent within a period of five (5) business days from the date of such disqualification, all job permits on which the incumbent has been designated since the effective date, shall be deemed revoked.

(g) Registration term. Registrations issued under this rule are valid for three years from the date of issuance.

(h) Registration Fees. The initial fee for registration in accordance with these rules is \$100.00.

(i) Renewals.

(1) Renewal applications shall be submitted between thirty and sixty days prior to the expiration date of the registration.

(2) The fee for timely renewal is \$50.00. Renewals not submitted in a timely manner shall be subject to an additional late fee of \$50.00.

(3) Timely renewal applications shall be accompanied by proof that the applicant has, during the one-year prior to renewal, successfully completed:

(i) a seven-hour Site Safety Manager course approved by the Department; or

(ii) any equivalent course(s) approved by the Commissioner, including those in electronic format.

(4) Renewals not filed within one year of registration expiration shall be subject to the requirements of subdivision d of this section.

§ 48-04 Disciplinary Actions.

(a) *Suspension or revocation of registration.*

(1) After notice and the opportunity for a hearing in accordance with the rules of the Department, a construction superintendent registration may be suspended or revoked by the commissioner, with or without the imposition of penalties, or penalties may be assessed, for violation of any provision of the Building Code, the rules of the Department, the Zoning Resolution or any other applicable laws or rules, inclusive of the provisions of subdivision b of this section. Unless replaced by another registered construction superintendent within five (5) business days of such suspension or revocation, all jobs on which the construction superintendent is designated shall be stopped and the permits shall be deemed suspended until such time as a duly registered construction superintendent is designated or such permits expire.

(2) Notwithstanding the provisions of paragraph 1 of this subdivision, where the Commissioner finds that emergency action is necessary to protect public safety, the Commissioner may suspend immediately upon notice the registration of a construction superintendent and shall schedule a hearing to be held within 15 days of such notice in accordance with the rules of the Department. At the conclusion of that hearing, the Administrative Law Judge may lift the suspension, revoke the registration, or, alternatively, if the Administrative Law Judge finds that the summary suspension of the registration was appropriate, but that further hearings are necessary to make a final determination of the charges, the Administrative Law Judge may make a finding as to the need for further hearings and continue the suspension pending such further hearings. Upon such initial suspension, unless replaced by another registered construction superintendent within five (5) business days of the suspension by the Commissioner, all jobs on which the construction superintendent is designated shall be stopped and the permits shall be deemed suspended until such time as a duly registered construction superintendent is designated or such permits expire.

(b) Penalties. Penalties assessed pursuant to paragraph 1 of subdivision a of this section shall not exceed one thousand dollars (\$1,000) for each violation by a construction superintendent of any of the rules of the Department, the Building Code, the Zoning Resolution or any other applicable laws or rules including, but not limited to any of the following:

- (1) Failure, upon receipt of an order or violation notice, to take the action called for in such order or notice.
- (2) Failure to respond in a timely manner to any Department inquiry.
- (3) Performance or supervision of construction work in a manner contrary to the requirements of applicable codes, rules, the Zoning Resolution or applicable approved plans as they relate to the duties of a person superintending work.
- (4) Fraudulent dealing or misrepresentation.
- (5) The conviction of a criminal offense relating to offering or receiving a bribe, giving or receiving unlawful gratuities, engaging in official misconduct, or other corruption-related acts, where the underlying act arises out of the registrant's occupation or business dealings with the City of New York or with any other governmental entity.
- (6) The making of any false statement in an application for registration or the renewal of a registration or other application or registration required by the Department, or in any proof or instrument in writing in connection therewith.
- (7) Exceeding the maximum number of permissible jobs to which the construction supervisor may be designated.
- (8) Failure to immediately notify the Department in writing upon being relieved from duties for any job upon which the construction superintendent is designated.

§ 48.05 Obligations of Others.

Nothing in this rule is intended to alter or diminish any obligation otherwise imposed by law on others, including but not limited to, the owner, construction manager, general contractor, contractor, materialman, architect, engineer, site safety manager, land surveyor, or other party involved in a construction project to engage in sound engineering, design, and construction practices, and to act in a reasonable and responsible manner to maintain a safe construction site.

§48-06 Severability.

If any clause, sentence, paragraph, section or part of this rule or the application thereof to any person or circumstance shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this rule or the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstance involved.

§ 2. Subdivision a of section 13-11 of chapter 13 of title 1 of the Rules of the City of New York is amended by adding new paragraph 16 to read as follows:

* * *

(16) A petition by which the Department seeks an order of suspension or revocation of the registration of a Construction Superintendent.

STATEMENT OF BASIS AND PURPOSE

The foregoing rule is proposed pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter. The proposed rule promotes public safety by assuring that qualified people with the appropriate knowledge of construction risk-prevention supervise construction sites. Previously, the lack of standards for construction superintendents increased the likelihood of accidents at construction sites. By setting consistent standards for the qualification of construction supervisors, the proposed rule benefits the public by increasing the level of on-site construction safety, thereby reducing the number of on-site construction accidents. The proposed rule also benefits the construction industry by further promoting safety on construction sites for both workers and property.

Section 13-11 is being amended to add suspension or revocation of construction superintendent registration to the list of matters that are heard at the Office of Administrative Trials and Hearings.