

## NOTICE OF ADOPTION OF RULE

**NOTICE IS HEREBY GIVEN**, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the addition of Chapter 52 to Title 1 of the Official Compilation of the Rules of the City of New York, regarding work pursuant to an earthwork permit.

This rule was first published on July 20, 2006 and a public hearing thereon was held on August 22, 2006. This rule shall take effect 30 days from the date hereof.

Dated: September 2006  
New York, New York

---

Patricia J. Lancaster, F.A.I.A.  
Commissioner

Title 1 of the Rules of the City of New York is amended by adding a new chapter 52 as follows:

Chapter 52  
Notification to the Department of Commencement of Work Pursuant to an  
Earthwork Permit

§52-01 Notification to the Department of Commencement of Work Pursuant to an  
Earthwork Permit

(a) Notification to the Department. Pursuant to Section 27-195 of the Administrative Code and subject to the exceptions set forth in subdivision (e) herein, no earthwork within the property line shall commence unless the permit holder notifies the Department as here prescribed at least twenty-four (24) but no more than forty-eight (48) hours prior to the commencement of such work. The notification shall state the date that such earthwork is to commence. Should the notification date fall on a weekend or an official holiday, the permit holder shall notify the Department on the last business day before the commencement date.

(b) Cancellation. In the event that the earthwork does not begin on the date provided in the notification to the Department, the permit holder shall notify the Department of its cancellation not more than twenty-four (24) hours prior to but no later than the date for which the earthwork was scheduled. Should the cancellation date fall on a weekend or an official holiday, the permit holder shall notify the Department on the next business day after the intended commencement date. The permit holder shall notify the Department of the new intended commencement date pursuant to the provisions of subdivision (a), above.

(c) Method of notification and cancellation. Such notification and cancellation shall be made by telephone or electronically.

(d) Stop work order. The Commissioner may issue a stop work order if there is a failure to provide notice as required in this section and if the work is found to violate any of the provisions of the Building Code, the Zoning Resolution or other applicable law, rule or regulation. Upon issuance of such stop work order, the work shall be stopped for a minimum of three (3) business days to enable the Department to take any other appropriate action to ensure that the earthwork is being performed in a safe manner. The earthwork shall not recommence until the stop work order has been lifted.

(e) Exceptions. The provisions of this section shall not apply to:

(1) Hand excavation work that extends five (5) feet or less below the grade existing at the time of earthwork commencement and is two (2) feet or more from an existing foundation. This exception shall not apply to any hand excavation work performed anywhere in existing or demolished basements or cellars that adjoin existing foundations.

(2) Test pits for geotechnical observation that do not exceed ten (10) feet in length, width or diameter and that are excavated under the supervision of a licensed professional.

(3) Work on cemetery grounds for burials.

(4) Emergency work performed by the Department of Housing Preservation and Development (HPD) or other agency as directed by the Commissioner or work on unsafe buildings performed by HPD or other agency pursuant to a precept.

### **STATEMENT OF BASIS AND PURPOSE**

This rule is proposed pursuant to the authority of the Commissioner of Buildings under sections 643 and 1043 of the New York City Charter and Section 27-195 of the New York City Administrative Code.

The Department proposes to require 24- to 48-hour notification prior to the start of earthwork in order to enable the Department to investigate whether the work is being performed according to accepted safety standards. The proposed rule will help in promoting the safety not only of adjacent properties and property owners, but also of the workers at the site.