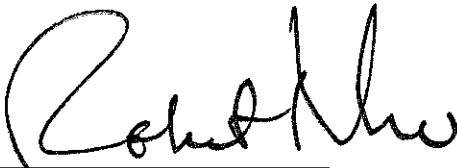


NOTICE OF ADOPTION OF RULE

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 section 101-08 to subchapter A of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding required insurance for permittees.

This rule was first published on December 1, 2010 and a public hearing thereon was held on January 4, 2011. This rule shall take effect on June 13, 2011.

Dated: 2/17/11
New York, New York



Robert D. LiMandri
Commissioner

Subchapter A of chapter 100 of title 1 of the Rules of the City of New York is amended by adding a new section 101-08 to read as follows:

§101-08 - Required Insurance and Indemnification

- (a) Definitions. For the purposes of this section, all terms used herein shall have the same meanings as set forth in the building code. In addition, the following terms shall have the following meanings:
 - (1) Adjacent building. A building of record sharing a lot line with the property for which a permit is issued.
 - (2) Major Alteration. Alteration of an existing building involving demolition of more than 50% of its floor area; work that will result in the removal of one or more floors of an existing structure; or horizontal or vertical enlargement affecting the exterior envelope of an existing building.
 - (3) Permit. Any of the permit types set forth in items 1-4 of Administrative Code §28-105.2.
 - (4) Permittee. The person who or entity that obtains or renews a permit. Such term shall include an applicant for a permit.
- (b) Applicability. This rule applies to permits as defined in subdivision (a) of this section.
- (c) Permit issuance and renewal. For permits requiring proof of insurance under this section, no permit shall be issued or renewed until the permittee has provided the department with proof of insurance in accordance with subdivision (g) hereof.
- (d) Insurance requirements.
 - (1) Liability insurance.
 - (i) As a condition to the issuance or renewal of a permit for which project-specific liability insurance is required under Table 1 in subparagraph (ii) of this paragraph, the permittee shall procure and maintain general liability insurance with total per-occurrence and aggregate limits at least as high as those set forth in Table 1. This total minimum limit may be achieved through any combination of primary, excess, umbrella or wrap-up policies, so long as those policies:
 - (A) are issued by a company or companies that may lawfully issue the required policy and has an A.M. Best rating of at least A-“VII” or a Standard and Poor's rating of at least A;

- (B) provide coverage at least as broad as set forth in the most recent edition of Insurance Services Office (ISO) Form CG 0001;
 - (C) provide that the city, together with its officials and employees, is an Additional Insured with coverage at least as broad as set forth in the most recent edition of ISO Forms CG 2012 or CG 2026;
 - (D) provide a total aggregate limit of coverage (equal to or above the per-occurrence limit) that applies exclusively to the project for which the permit is issued (pursuant to a project-specific policy or a per-project aggregate limit endorsement such as ISO Form CG 2503);
 - (E) contain none of the following exclusions:
 - 1. completed operations exclusion;
 - 2. XCU exclusion;
 - 3. contractual liability exclusion;
 - 4. third party actions over exclusion;
 - 5. where project involves residential construction, a residential construction exclusion; or
 - 6. where project involves use of an Exterior Insulation & Finish System (EFIS), an EFIS exclusion; and
 - (F) contain the following endorsement: This policy shall not be cancelled, terminated, modified or changed in a way that affects the city by the issuing insurance company unless thirty (30) days prior written notice is sent to the Named Insured and the Commissioner of the New York City Department of Buildings, except that termination for non-payment may be made on only ten (10) days' written notice.
- (ii) Table 1 (minimum per-occurrence and project-specific aggregate limits):

Criterion 1	Criterion 2 (Tower Crane Y/N)	Criterion 3 (Permit Type)	Criterion 4 (Proposed Height or Height of Tallest Adjacent Building)	Required Project Specific Coverage
1/2 Family Home AND Depth of Excavation < 12' AND Proposed Construction is not on a lot line with an existing structure AND Proposed Height < 35' AND No Tower Crane	N/A	Foundation ¹ , New Building ¹ , Full Demo ¹ , or Major Alteration ^{1, 2}	N/A	N/A, but comply with the requirements of (d)(1)(iv)
Not 1/2 Family Home OR Depth of Excavation > 12' OR Proposed Construction is on a lot line with an existing structure OR Proposed Height > 35'	NO	Foundation ¹	Tallest Adjacent Building < 7 stories and < 75 feet	\$5 million
			Tallest Adjacent Building between 7-14 stories and <150 Feet	\$10 million
			OR Tallest Adjacent Building <=14 stories and between 75-150 feet	
			Tallest Adjacent Building > 14 stories or >= 150 feet	\$15 million
		Full Demo ¹	Tallest Adjacent Building < 7 stories and < 75 feet	\$5 million
			Tallest Adjacent Building between 7-14 stories and < 150 feet	\$15 million
			OR Tallest Adjacent Building <=14 stories and between 75-150 feet	
			Tallest Adjacent Building > 14 stories or >= 150 feet	\$25 million
		New Building ¹ or Major Alteration ^{1, 2}	Proposed Number of Stories < 7 stories and < 75 feet AND Tallest Adjacent Building < 7 stories and < 75 feet	\$5 million
			Proposed Number of Stories between 7-14 stories and < 150 feet AND Tallest Adjacent Building <=14 stories or < 150 feet OR	

			Proposed Number of Stories <=14 stories and between 75-150 feet AND Tallest Adjacent Building <=14 stories or <150 feet OR Tallest Adjacent Building between 7-14 stories and < 150 feet AND Proposed Number of Stories <=14 stories or <150 feet OR Tallest Adjacent Building <=14 stories and between 75-150 feet AND Proposed Number of Stories <=14 stories or < 150 feet	\$15 million
			Proposed Number of Stories > 14 stories or >= 150 feet OR Tallest Adjacent Building > 14 stories or >= 150 feet	\$25 million
			YES	ALL Permits ¹
	ALL OTHER PERMITS			N/A, but comply with the requirements of (d)(1)(iv)
¹ other than a storage shed, garage, or similar accessory use to a residential structure				
² Major Alteration =				
1) Alteration permit involving demolition of more than 50% of the floor area of an existing building, or				
2) Work that will result in the removal of one or more floors of an existing structure, or				
3) Horizontal or vertical enlargement affecting the exterior envelope of an existing building				

(iii) In its sole discretion, the department may allow a permittee to satisfy the requirements of subparagraphs (i) and (ii) of this paragraph through a self-insurance program.

(iv) With regard to all permits (or permit renewals) for which project-specific liability insurance is not required under Table 1 in subparagraph (ii) of this paragraph, in advance of the issuance (or renewal) of such permit, permittee shall cause the city, together

with its officials and employees, to be named an additional insured on the liability insurance, if any, required of the permittee as a licensee under section 104-02, with regard to all operations pursuant to the permit. The city's coverage shall be at least as broad as set forth in the most recent edition of ISO Forms CG 2012 or CG 2026.

(2) Workers' compensation insurance. As a condition to the issuance or renewal of a permit, the permittee shall procure and maintain workers' compensation insurance as required by law.

(3) Disability benefits insurance. As a condition to the issuance or renewal of a permit, the permittee shall procure and maintain disability benefits insurance as required by law.

(e) Exemptions.

(1) Homeowners applying for permits for work on their own one, two or three family dwellings who obtain a waiver of New York State workers' compensation and/or disability insurance from the New York State Workers' Compensation Board are exempt from the requirements of paragraphs (2) and/or (3) of subdivision (d) of this section.

(2) Where there are no employees in the company or business of a permittee, the permittee is exempt from the requirements of paragraphs (2) and (3) of subdivision (d) of this section.

(3) Emergency work. When the department issues an emergency declaration or an immediate emergency declaration, the demolition contractor shall provide the department with proof of insurance conforming to the requirements of this section prior to commencing the demolition work. Contractors employed by the city for such emergency work shall have such insurance but need not provide proof prior to commencing the demolition work.

(f) Notification. Regardless of whether it has procured liability insurance in accordance with section 104-02 of these rules (as licensee of the department) or with this section, the permittee shall notify in writing all of liability insurance carriers of any loss, damage, injury, or accident, and any claim or suit arising out of or relating to any operations performed by or on behalf of the permittee for which the department has issued it a permit (including an injury or accident affecting permittee's own employees) no later than 20 days after such event. Such notice to liability carriers must expressly specify that "this notice is being given on behalf of the city of New York as Additional Insured as well as the Named Insured." Such notice shall also contain the following information: the name of the named insured, the number of the permit, the date of the occurrence, the location (street address and borough) of the occurrence, and the identity of the

persons or things injured, damaged or lost. The permittee shall simultaneously send a copy of such notice to the city of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

- (g) Proof of liability insurance. For permits for which project-specific liability insurance is required under paragraph (1) of subdivision (d) of this section (or for renewals of such permits), each applicant shall file with the department, at the time it applies for such a permit (or permit renewal), a certificate of insurance relating to such insurance in a form prescribed by the department and a sworn statement from a licensed insurance broker in a form prescribed by the department.
- (h) Copies of insurance policies. The permittee shall provide a copy of any required policy within thirty (30) days of a request for such policy by the department or by the New York City Law Department.
- (i) Maintenance of insurance. The permittee shall maintain the insurance required under this rule in full force and effect for the duration of the permit and any renewals thereof. In the event any required insurance expires, is cancelled or otherwise terminates without being simultaneously replaced with new or renewed insurance satisfying the requirements of this rule, the permittee shall immediately notify the department of such fact. If any required insurance is found at any time to be absent or non-compliant, the department may issue the permittee a stop work order relating to the permit at issue.
- (j) Indemnification. Regardless of whether it has procured insurance in accordance with section 104-02 of these rules (as a licensee of the department) or with this section, the permittee shall indemnify, defend and hold the city and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements), known or unknown, contingent or otherwise, allegedly arising out of or in any way related to operations for which the department has issued a permit and/or the permittee's failure to comply with any of the requirements set forth herein or law. Insofar as the facts and law relating to any claim would preclude the city and its officials and employees from being completely indemnified by the permittee, the city and its officials and employees shall be partially indemnified by the permittee to the fullest extent permitted by law.
- (k) Failure to secure or maintain insurance. In the event a permittee fails to secure or maintain insurance in full compliance with this section, such permittee shall be obligated to indemnify the city pursuant to subdivision (j) of this section and/or pay the city all amounts arising from such failure, including but not limited any settlement or judgment paid by the city on an uninsured claim or action, plus a sum equal to the reasonable costs of defending such claim or action. The city's

right to such amounts are additional to all other rights the city may have arising from a violation of these regulations or otherwise under the law.

- (1) Failure to enforce. A failure by the city or by the department to enforce any of the foregoing requirements shall not constitute a waiver of such requirement or any other requirement.

STATEMENT OF BASIS AND PURPOSE

The foregoing rule is promulgated pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter and Sections 28-103.15 and 28-105.12.7 and 28-105.12.7.1 of the NYC Administrative Code.

The Department of Buildings is authorized to promulgate rules to implement the New York City Construction Codes, including rules regarding insurance requirements for applicants for permits and permit renewals. This rule imposes insurance requirements, including general liability, workers' compensation, and disability benefits insurance, on permittees performing construction and demolition work. It also requires that the City be an additional insured under the general liability policy. Pursuant to section 28-105.12.7.1, the rule takes into consideration adjacent buildings and sets higher insurance requirements to afford protection to individuals and such adjacent or nearby properties. The rule advances public safety by assuring that persons or entities seeking permits have appropriate and adequate insurance coverage and by setting consistent standards for the required insurance policy type and amount.