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 amendments to section 102-01 of subchapter B of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding violation reclassification.

This rule was first published on December 28, 2009 and a public hearing thereon was held on February 1, 2010.

Dated: 2/4/10
New York, New York

Robert D. LiMandri
Commissioner

Subdivision (j) of Section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding, in numerical order, new entries relating to New York City Administrative Code Section 28-116.1 and Building Code Section 3303.7.3 to read as follows:

Section 1

Section of Law	Classification	Violation Description
28-116.1	Class 2	Failure of permit holder to provide inspection access to and/or expose ongoing construction or work on an active and permitted worksite.

Section 2

Section of Law	Classification	Violation Description
BC 3303.7.3	Class 1	Smoking at construction/demolition site.

Section of Law	Classification	Violation Description
BC 3303.7.3	Class 2	Smoking at construction/demolition site.

Section of Law	Classification	Violation Description
BC 3303.7.3	Class 2	Failure to post No Smoking signs at construction/demolition sites per Fire Code.

Statement of Basis and Purpose

The foregoing rule amendment is proposed pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter. In accordance with the below, the Department proposes to add these new infractions to Subdivision (j) of 1 RCNY 102-01 and the Department's Penalty Schedule in order to adequately and effectively enforce the related laws.

Section 1

The amendment to Section 102-01 of the Department's rules results from the inadequacy and/or omission of penalties that exist where Department inspectors are denied access to observe ongoing work at active construction sites. Without penalties specific to the provision, Section 116.1 of Title 28 cannot be effectively enforced.

Department inspectors are often denied access to ongoing work at construction sites during random visits designed to ensure that work is being performed in accordance with the code and within the scope of the permit. These denials of access often go without penalty, potentially conceal illegal work and often require subsequent follow-up inspections or other enforcement mechanism, such as a Stop Work Order, in order to compel an inspection.

The intent of the new infraction is to create a disincentive to a permit holder's denial of access to Department inspections of ongoing work on an active permit.

Section 2

The amendments to Section 102-01 of the Department's rules result from the enactment of Local Law 36 of 2009 which was enacted on June 29, 2009 and became effective on August 28, 2009.

Local Law 36 of 2009, which prohibits smoking at construction sites, amends BC Section 3303 of the New York City Building Code by adding a new section BC 3303.7.3, prohibiting smoking at all construction and demolition sites, and requires "No Smoking" signs to be posted in accordance with the provisions of Section 310 of the New York City Fire Code and any rules promulgated thereunder.

It is well established that construction and demolition sites are dangerous places where flammables and combustible materials and substances are often stored and used. Over the years, smoking has been identified as the root cause of many construction fires. The Department's intention is to make a clear statement to the construction industry that smoking is dangerous and intolerable at construction and demolition sites.

In furtherance of the many outreach and enforcement efforts which have been ongoing at these sites throughout the City over the past, the Department is adding three new infractions to the Penalty Schedule. Such violations will be issued to the general contractor, subcontractor or permit holder in charge and control of the construction or demolition site.