



Promulgation Details for 1 RCNY 102-04

This rule became effective on February, 22, 2014.

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 102-04 to Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding civil penalties for work without a permit and violation of stop work orders.

This rule was first published on December 5, 2013 and a public hearing thereon was held on January 10, 2014.

Dated: 1/14/14
New York, New York



Thomas Fariello, R.A.
Acting Commissioner

STATEMENT OF BASIS AND PURPOSE

Under article 105 of title 28 of the New York City Administrative Code, a written permit is required to conduct work in connection with any building, structure, sign, service equipment, or gas, mechanical, plumbing or fire suppression system in the city. The permit requirement is subject to certain exemptions as stated in section 28-105.4, including exemptions for “categories of work as described in department rules, consistent with public safety.”

Under Article 213, the New York City Department of Buildings (“Department”) must impose a civil penalty for work without a permit and adopt a rule describing the procedure for the assessment of such penalties. Such civil penalty is in addition to the penalties authorized under article 202 of the New York City Administrative Code. Section 28-213.2 also provides that a waiver or reduction of the penalty is available, pursuant to Department rules, to a subsequent bona fide purchaser of a building on which work without a permit was performed. The proof needed to show that an owner is a subsequent bona fide purchaser is further explained in this rule.

Under article 207, the Commissioner of the Department may issue a “stop work order” if building work is being performed in violation of applicable laws and rules or in a dangerous or unsafe manner. Under section 28-207.2.3, the Commissioner may rescind a stop work order under certain circumstances, including following the payment of civil penalties, or where the stop work order should not have been issued.

Section 1 of the rule repeals the existing civil penalties rule, which has been superseded in part by the Administrative Code and no longer reflects current practice.

Section 2 of the rule sets forth:

- When payment of a civil penalty for work without a permit or violation of a stop work order is required
- How civil penalties for work without a permit are assessed
- Requirements and procedures for overrides, waivers, and/or reductions of a civil penalty for work without a permit or violation of a stop work order
- Requirements for a refund of the payment of such civil penalty

The Department’s authority for these rules is found in sections 643 and 1043 of the New York City Charter and articles 105, 207, and 213 of the New York City Administrative Code.

New material is underlined. [Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 33-01 of title 1 of the rules of the city of New York is REPEALED.

§ 2. Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new section 102-04 to read as follows:

§102-04 Civil penalties for work without a permit and for violation of stop work orders.

(a) Payment of civil penalty for work without a permit or violation of a stop work order. Except as otherwise provided in this section, payment of the civil penalty is required before:

- (1) Issuance of a permit for work in a particular space when work was performed without a permit in such space and the penalty for such unpermitted work has not been paid.
- (2) Renewal of a permit for work performed after the expiration of a permit when the penalty for such unpermitted work has not been paid.
- (3) Acceptance of a certificate of correction for a violation issued for work without a permit, even if removal of such work occurred or is required and the removal does not require a permit.
- (4) Rescission of a stop work order.

(b) Assessment of civil penalty for work without a permit. The civil penalty for work without a permit is assessed as follows:

- (1) The civil penalty is based on occupancy status as shown on the Certificate of Occupancy or other Department records.
- (2) Pursuant to § 28-213.1.1 of the Administrative Code, the penalty for work performed without a permit on a one-family or two-family dwelling (which includes inside a residential condominium or cooperative unit) is either four times the amount of the current fee payable for the permit or \$500, whichever is greater. Where only part of the work has been performed without a permit, the Department will reduce the penalty proportionately according to the amount of work still to be performed at the time the Department issues a permit but not to an amount less than \$500.
- (3) Pursuant to § 28-213.1.2 of the Administrative Code, the penalty for work performed without a permit on a building other than a one-family or two-family dwelling (which includes work on any common area of a condominium or cooperative building) is either fourteen times the amount of the current fee payable for the permit or \$5,000, whichever is greater. Where only part of the work has been performed without a permit, the Department will reduce the penalty proportionately according to the amount of work still to be performed at the time the Department issues a permit but not to an amount less than \$5,000.
- (4) Expired permits or working without an after-hours variance. The penalty for work performed after the expiration of a permit for such work or for work

performed after hours without a variance permit is \$500 when such unpermitted work is performed on a one-family or two-family dwelling or \$5,000 when such unpermitted work is performed on a building other than a one-family or two-family dwelling.

(5) Removal of illegal work. If work that was performed without a permit is removed, the penalty for the unpermitted work is \$500 when performed on a one-family or two-family dwelling or \$5,000 when performed on a building other than a one-family or two-family dwelling, even if the removal did not require a permit.

(6) Fee-exempt properties. When unpermitted work is performed on properties not subject to permit fees pursuant to § 28-112.1 of the Administrative Code, the penalty for such unpermitted work is \$500 when performed on a one-family or two-family dwelling or \$5,000 when performed on a building other than a one-family or two-family dwelling.

(7) Legalization of completed work. If work has been performed without a permit and an applicant seeks a permit for the unpermitted work before a notice of violation is issued, the penalty for such unpermitted work is \$500 when performed on a one-family or two-family dwelling or \$5,000 when performed on a building other than a one-family or two-family dwelling.

(c) Override of civil penalty for work without a permit. If an applicant has an outstanding violation for unpermitted work and seeks a permit for work in a space not related to the violation, the Department may issue a permit for work in the space not related to the violation. Any permit that is granted pursuant to this subdivision will not affect the outstanding violation or any civil penalty assessed for the unpermitted work.

(d) Waiver of civil penalty for work without a permit. Notwithstanding any penalty waiver, a permit must be obtained for the unpermitted work. The Department may waive a civil penalty for work without a permit in the following instances:

(1) Where an owner is a subsequent bona fide purchaser and the previous owner performed the unpermitted work, whether or not the subsequent bona fide purchaser received notice of the violation. The Department requires the following supporting documentation:

(i) Copy of the deed;

(ii) Notarized affidavit stating that there is no relationship between the previous owner and the subsequent bona fide purchaser. If the subsequent bona fide purchaser is an entity, the affidavit must be on the entity's letterhead and signed by the owner or an officer of the entity. The affidavit must include:

(A) The name of the subsequent bona fide purchaser;

(B) The location of the property;

(C) A statement that the subsequent bona fide purchaser did not receive the property as a gift;

(D) A statement that the subsequent bona fide purchaser had no interest or relationship with the prior owner at the time of purchase; and

(E) A statement that the subsequent bona fide purchaser is not acting in any way for the benefit of the prior owner.

(2) Where a violation for working without a permit has been dismissed.

(3) Where the Department of Housing Preservation and Development (HPD) or another agency performed emergency work as directed by the Commissioner pursuant to § 28-215.1 of the Administrative Code or where HPD or another agency performed work on unsafe buildings in accordance with § 28-216.8 of the Administrative Code.

(4) Where emergency work is performed without a permit, except for emergency work described in paragraph (3) of this subdivision, and an application for the work is filed with the Department within two business days after commencement of the work.

(5) Where a fence, shed or scaffold (or other temporary construction equipment) was installed with a valid permit and the permit has expired.

(6) Where a permit (other than for temporary construction equipment) expired and no work was performed after the permit's expiration.

(7) Where the city, state, or federal government or other government entity or public authority owns the property where the unpermitted work occurred.

(8) Where HPD third-party transfers occur after a court issues a foreclosure judgment allowing the City to transfer title of the foreclosed property to a new owner. The new owner must provide a letter from HPD stating that a third-party transfer occurred and that the Department must waive any penalties accrued before the closing date of the transfer.

(9) Multiple violations. Upon payment of the civil penalty and acceptance of a Certificate of Correction for unpermitted work for which multiple notices of violation have been issued, any outstanding civil penalties for the same unpermitted work at the same location will be waived.

(e) Waiver of civil penalty for failure to comply with a stop work order. The Department may waive a civil penalty for failure to comply with a stop work order in the following instances:

(1) Where the Commissioner determines that a stop work order has not been violated.

(2) Where a violation for failure to comply with a stop work order has been dismissed.

(f) Request for override, reduction, or waiver of a civil penalty.

(1) Any request for an override, reduction or waiver of a civil penalty must be in writing. The applicant must submit a notarized "L2 Request for Overrides, Reductions or Waivers of Civil Penalties for Work without a Permit and Stop Work Order Violations" form. In addition, the applicant must submit any supporting documentation required by the form or by paragraph (5) of this subdivision.

(2) The Department will review the application and issue a determination.

(3) An applicant may appeal the determination to the Commissioner of the borough (Borough Commissioner) in which the property is located or such Commissioner's designee.

(4) An applicant may appeal the Borough Commissioner's or his or her designee's determination by submitting it to the Borough Commissioner's office, where it will be forwarded to the Department's Associate Commissioner for Borough Operations or to the Associate Commissioner's designee. These final appeals must be submitted within 30 days from the date of the Borough Commissioner's or his or her designee's determination.

(5) Burden of proof and acceptable forms of supporting documentation.

(i) The burden of proof is on the applicant to show that a civil penalty should be overridden, reduced, or waived.

(ii) Supporting documentation for a request for an override of a penalty must consist of the following:

(A) A copy of approved plans;

(B) A completed job application; and

(C) A copy of the relevant violation and a dated color photograph of the area of the work at issue showing the current work area is unrelated to the violation;

(iii) Supporting documentation for a request for a reduction in a penalty must consist of:

(A) Affidavits from contractors or building supply warehouses concerning the unpermitted work at issue;

(B) A copy of the violation(s); and

(C) Any other documents required by the Commissioner.

(iv) Supporting documentation for a request for a waiver of the penalty must consist of a copy of the relevant violation and the following documents:

(A) For emergency work performed without a permit, a copy of the work application filed within two business days after commencement of the unpermitted emergency work;

(B) For a violation that has been dismissed, proof of dismissal;

(C) For subsequent bona fide purchasers claiming that unpermitted work was performed by a previous owner, the documents required as stated in subdivision (d) of this section; and

(D) Any other documents required by the Commissioner.

(v) Effect of inconsistent or incomplete documentation. If the information on the L2 form or supporting documentation contradicts the description of work completed as stated on the violation, or if the L2 form or supporting documentation is incomplete, the request for an override, reduction or waiver of the penalty may be denied.

(vi) The Commissioner may reject incomplete or illegible documents. The Commissioner reserves the right to audit all submissions.

(g) Refunds. If the civil penalty for performing unpermitted work is paid and the underlying violation is subsequently dismissed for any reason, the applicant will be eligible for a refund of the civil penalty payment upon submitting proof of dismissal and payment of the violation.