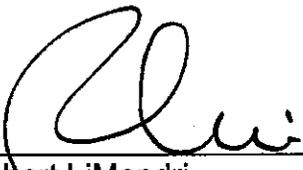


NOTICE OF ADOPTION OF RULE

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 3606-02 to Subchapter G of Chapter 3600 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding letters of map change as they pertain to flood resistant construction.

This rule was first published on April 10, 2008 and a public hearing thereon was held on May 13, 2008.

Dated: JUNE 5, 2008
New York, New York



Robert LiMandri
Acting Commissioner

Section 1. Subchapter G of chapter 3600 of title 1 of the Rules of the City of New York is amended by adding a new section 3606-02 to read as follows:

§3606-02 Letters of map change.

(a) Scope. This section establishes procedures for processing letters of map change, including Letters of Map Amendment and Letters of Map Revision based on Fill.

(b) References. See Sections BC G102.3, G106.5, and G201.2 (definitions of letter of map amendment (LOMA) and letter of map revision based on fill (LOMR-F)) and Section 28-104.7.11.

(c) Letters of Map Amendment (LOMAs). Where the FEMA FIRMs 360497 indicate that a tax lot or structure is located within an area of special flood hazard, but the owner has obtained an approved LOMA from FEMA removing such tax lot or structure from areas of special flood hazard, the applicant shall nonetheless indicate on the application for construction document approval that the work is located within an area of special flood hazard. However, the work need not conform to the requirements of Appendix G of the Building Code provided (i) the applicant submits the approved LOMA with the application for construction document approval and (ii) the proposed work does not alter the grades on the site to be lower than those elevations specified in the LOMA. The examiner shall waive any required items relating to flood zones. Certificates of occupancy shall comply with Section BC G106.5.

(d) Letters of Map Revisions based on Fill (LOMR-Fs). The following procedures shall be followed where the owner requests that the Department sign a FEMA "Community Acknowledgment Form" in support of an application to FEMA for a LOMR-F (see 44 C.F.R. § 65.5). In no case shall fill be placed so as to raise the level of grade higher than curb level within a required yard or rear yard equivalent (see Zoning Resolution §§ 23-42, 33-22, and 43-22). The applicant shall undertake the following steps in the following order:

(1) Submit application for construction document approval. Work to re-grade a site in an A-Zone in order to remove land from an area of special flood hazard shall be performed pursuant to a work permit issued by the Department. Such work shall be allowed as either a separate earthwork application or as part of a new building or alteration application. The application for construction document approval shall include (i) through (v) below:

(i) The check-off in the box on the application that the work is located in an area of special flood hazard;

(ii) An “Initial Survey” of existing conditions showing 1’-0” contour lines;

(iii) No fewer than three sections traversing the entire parcel showing the base flood elevation, any proposed structures (including elevation of lowest floor), required yards and rear yard equivalents, levels of existing natural grade, levels of grade to be removed, final levels of compacted fill, and final levels of uncompacted topsoil. Additional sections shall be required when necessary to adequately depict that the work proposed complies with the code. All levels shall be indicated in NGVD with borough datum in parentheses;

(iv) An “Initial LOMR-F Flood Zone Certification” by the registered design professional who is the applicant, stating:

“In accordance with FEMA’s Technical Bulletin 10-01 and in accordance with accepted professional practice, I, _____, certify that the design for the aforementioned development is reasonably safe from flooding and that the design of the development will not increase the risk of flooding to surrounding areas. Additionally, I certify that the design complies with the requirements of Appendix G of the Building Code, and that the level of compacted fill adjacent to all structures in the development, exclusive of uncompacted topsoil, is proposed to be at or above the base flood elevation. Further, I certify that no fill is proposed to be placed in the regulatory floodway or in an area designated as a V-Zone. Further I certify that all applicable Federal, State, and local laws shall be complied with, and all Federal, State, and local permits required for the proposed work have been obtained and submitted into the folder for this job”; and

(v) Identification of special inspection for fill placement and of evaluation of in-place density in accordance with Sections BC 1704.7.2 and 1704.7.3 (to be certified prior to sign-off). Compaction standards shall be as referenced in FEMA Technical Bulletin 10-01.

(2) Obtain approval of construction documents.

(3) Submit application to FEMA for Conditional LOMR-F (CLOMR-F) (optional). While the CLOMR-F is an optional step, it provides preconstruction assurance that FEMA will approve the Final LOMR-F if constructed in accordance with the approved plans. At any time after construction document approval, the applicant may present to the

Borough Commissioner for the Borough Commissioner's review and signature a FEMA "Community Acknowledgement Form" (which shall indicate "Conditional LOMR-F" in the "Community Comments" section), along with the approved construction documents. The owner may submit this signed Community Acknowledgement Form to FEMA. If the owner elects not to undertake the actions specified in this paragraph three, the owner must nonetheless follow the procedures and take the actions specified in paragraphs four through eight of this subdivision, however, in such case, there will be no preconstruction assurance that FEMA will ultimately approve the Final LOMR-F.

(4) Obtain work permit.

(5) Complete all grading, fill, and foundation work.

(6) Present Community Acknowledgement Form to Borough Commissioner. After the completion of all grading, fill and foundation work, the applicant shall present to the Borough Commissioner for review and signature a FEMA Community Acknowledgement Form, along with the approved plans and following list of additional required items:

(i) A "Final Survey" of completed conditions showing 1'-0" contour lines;

(ii) Certification of completion for the special inspections for fill placement and of evaluation of in-place density. Compaction standards shall be as referenced in FEMA Technical Bulletin 10-01; and

(iii) A "Final LOMR-F Flood Zone Certification" by the registered architect or professional engineer who is the applicant on the PW-1, stating:

"In accordance with FEMA's Technical Bulletin 10-01 and in accordance with accepted professional practice, I, _____, certify that all grading, fill and foundation work is complete, that the design for and construction of the aforementioned development is reasonably safe from flooding and that the design for and construction of the development will not increase the risk of flooding to surrounding areas. I have thoroughly reviewed the annexed "Initial Survey", "Final Survey" and the special inspection reports for fill placement and evaluation of in-place density. Further, I certify that the all work complies with the requirements of Appendix G the Building Code, and that the level of compacted fill adjacent to all structures in the

development, exclusive of uncompacted topsoil, is at or above the base flood elevation. Additionally, I certify that no fill has been placed in the regulatory floodway or in a designated V-Zone. Further, I certify that all applicable Federal, State, and local laws have been complied with, and all Federal, State, and local permits required for the work have been obtained and submitted into the folder for this job”.

(7) Apply to FEMA for Final LOMR-F. After the Borough Commissioner signs the Community Acknowledgement Form, the owner shall submit such signed form to FEMA.

(8) Submit to the Department the approved LOMR-F and either a signed elevation certificate or dry floodproofing certificate as required pursuant to Section BC G 105.3. No certificate of occupancy or other final signoff shall be issued by the Department unless and until the applicant submits to the Department the Final LOMR-F approved by FEMA and either a signed elevation certificate or dry floodproofing certificate, and until all documents and submissions required by this rule are microfilmed into the permanent records of the Department. Certificates of occupancy shall comply with Section BC G 106.5.

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, Sections 28-104.7.11 of the Administrative Code, and Section G102.3.2 of the New York City Building Code.

Article 10 of Chapter 1 of Title 27 of the 1968 Building Code is silent on the procedures for letters of map change within areas of special flood hazard. The Department established such procedures in its Technical Policy and Procedure Notice (TPPN) # 1 of 2004.

Section G 102.3 of the 2008 Building Code does provide a mechanism for administering letters of map change. However, as for the specific procedures to be followed, said section mandates that the Commissioner of Buildings promulgate rules.

This rule provides procedures to be followed for letters of map change, maintaining the current procedures established in TPPN 1/2004. This rule will ensure the City's continued compliance with the National Flood Insurance Program as mandated by Section 36.0105 of the New York State Environmental Conservation Law by providing procedures consistent with the requirements of the Federal Emergency Management Agency.