

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on proposed rule Section 2-11.1, which relates to Loft Board fines.

Date / Time: May 16, 2013 at 1:00 PM

Location: 22 Reade Street
1st Floor Spector Hall
New York, NY 10007

Contact: New York City Loft Board
280 Broadway
3rd Floor
New York, NY 10007
(212) 566-5663

Proposed Rule Amendment

Pursuant to the authority vested in the New York City Loft Board by Article 7-C of the Multiple Dwelling Law and Mayor’s Executive Order No. 129, dated May 22, 2009, and pursuant to and in accordance with the requirements of Section 1043 of the New York City Charter, the New York City Loft Board intends to add section 2-11.1 to Title 29 of the Rules of the City of New York to create a fine schedule to Loft Board’s rules. The amendments made to Article 7-C of the Multiple Dwelling Law, effective as of June 21, 2010, increased the maximum fine amount from \$1,000 to \$17,500 per violation.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment by mail to the New York City Loft Board at the address shown above or electronically through NYC RULES at www.nyc.gov/nycrules by May 16, 2013.
- To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact the New York City Loft Board at the phone number shown above by May 13, 2013.
- Written comments and summarized copies of the oral comments received at the hearing will be available by May 23, 2013 between the hours of 10:00 A.M. and 4:00 P.M. at the offices of the New York City Loft Board.

Statement of Basis and Purpose

On June 21, 2010, the New York State Legislature amended Section 282 of the Multiple Dwelling Law to increase the maximum fine amount that the Loft Board may impose for violations of its rules from \$1,000 to \$17,500 per violation. The Loft Board is now proposing to amend its penalties for violations of its rules in accordance with § 282 by adding a new section 2-11.1 to Title 29 of the Rules of the City of New York. The proposed rule outlines a fine schedule to provide both IMD owners and occupants in IMD buildings guidance about the potential fine for a violation of the Loft Board rules. The proposed rule also shows the potential fine if a party is found to have violated the same Loft Board rule previously.

Specifically, section 2-11.1 creates a fine schedule for violations of Loft Board rules § 2-01 (Code Compliance), § 2-01.1 (Reasonable and Necessary Action), § 2-02 (Harassment), § 2-05 (Registration), § 2-07 (Sale of Improvements), and § 2-10 (Sale of Rights) of Title 29 of the Rules of the City of New York. Sections 2-01.1 and 2-05 are also being amended to conform to the fine amounts in the proposed rule § 2-11.1.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this Board, unless otherwise specified or unless the context clearly indicates otherwise. "Civil penalty" and "fine" are also used interchangeably in these rules, unless otherwise specified or unless the context clearly indicates otherwise.

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

Section 1. Title 29 of the Rules of the City of New York is amended by adding a new section 2-11.1 to read as follows:

§ 2-11.1 Fine Schedule.

(a) Collection of fines. The Loft Board may charge and collect fines for violation of its rules. The Loft Board may, by amending these rules, modify the types of violations for which fines are assessed and/or revise the amount of the fine imposed.

(b) Range of fines.

(1) Code Compliance Fines Pursuant to § 2-01 and § 2-01.1:

Where the owner is found to have violated code compliances deadlines or failed to take all reasonable and necessary action to obtain a final certificate of occupancy, the owner may be subject to a Class C civil penalty as follows:

<u>VIOLATION DESCRIPTION</u>	<u>SECTION OF LAW</u>	<u>CURE</u>	<u>PENALTY</u>
<u>Failure to Meet Code Compliance Deadlines: §§ 281(1) and (4) buildings</u>	<u>MDL § 284 (1); 29 RCNY §§ 2-01(a)(1) through 2-01(a)(7); 2-01(c)(2)</u>	<u>No</u>	<u>Up to \$1,000 per missed deadline</u>
<u>Failure to Meet Code Compliance Deadlines: §§ 281(1) and (4) Buildings</u>	<u>MDL § 284(1); 29 RCNY § 2-01(a)(8); § 2-01(c)(2)</u>	<u>No</u>	<u>Up to \$5,000 per missed deadline</u>
<u>Failure to Meet Code Compliance Deadlines: §281(5) Buildings</u>	<u>MDL § 284(1); 29 RCNY §§ 2-01(a)(9) or (a)(10); 2-01(c)(2)</u>	<u>No</u>	<u>Up to \$5,000 per missed deadline</u>
<u>Failure to Take Reasonable and Necessary Action to Obtain a Final Certificate of Occupancy</u>	<u>29 RCNY §§2-01.1(a), (b)(2) and (3)</u>	<u>No</u>	<u>Up to \$1,000 per day up to \$17,500</u>
<u>Failure to Take Reasonable and Necessary Action: Failure to Timely Clear DOB objections for Owner’s Alteration Application</u>	<u>29 RCNY §2-01(d)(2)(ix)</u>	<u>Yes within 30 days</u>	<u>Up to \$1,000 per day up to \$17,500</u>

(2) Fines in Connection with Harassment Applications Pursuant to § 2-02:

A finding by the Loft Board that:

- (i) A tenant filed a harassment application in bad faith or in wanton disregard of the truth pursuant to § 2-02(c)(2)(iii) of these Rules; or
- (ii) An owner or prime lessee harassed an occupant pursuant to § 2-02(d)(1)(ii) or § 2-02(e)(3)(i) of these Rules, in a manner that impacts on the tenant’s safety including, but not

limited to, refusing to make repairs, repeated housing maintenance violations intended to render the unit uninhabitable, assault, battery or threats of violence; or

(iii) An owner or prime lessee harassed an occupant pursuant to § 2-02(d)(1)(ii) or § 2-02(e)(3)(i) of these Rules in a manner that impacts on the tenant’s quality of life, including, but not limited, to creating excessive noise or odors, threatening eviction, refusal to consent to sublet, and/or tampering with mail,

May subject the tenant, owner or prime lessee to a Class C civil penalty as follows:

<u>VIOLATION DESCRIPTION</u>	<u>SECTION OF LAW</u>	<u>CURE</u>	<u>PENALTY</u>	<u>AGGRAVATED PENALTY</u>
<u>Harassment Application Filed in Bad Faith</u>	<u>29 RCNY § 2-02(c)(2)(iii)</u>	<u>No</u>	<u>Up to \$4,000</u>	<u>A tenant found to have previously filed a harassment application in bad faith may be subject to an aggravated penalty of up to \$10,000.</u>
<u>Finding of Harassment: Safety Violations e.g., Hazardous Conditions; Housing Maintenance Violations; Refusal to Make Repairs</u>	<u>29 RCNY §§ 2-02(d)(1)(ii); 2-02(e)(3)(i)</u>	<u>No</u>	<u>\$3,000 to \$6,000 for each occurrence found to constitute harassment</u>	<u>An owner or prime lessee previously found to have harassed a tenant may be subject to an aggravated penalty of up to \$10,000.</u>
<u>Finding of Harassment: Quality of Life Violations e.g., Noise; Odors; Threat of Eviction; Refusal to Consent to Sublet</u>	<u>29 RCNY §§ 2-02(d)(1)(ii); 2-02(e)(3)(i)</u>	<u>No</u>	<u>\$2,000 to \$5,000 for each occurrence found to constitute harassment</u>	<u>An owner or prime lessee previously found to have harassed a tenant may be subject to an aggravated penalty of up to \$10,000.</u>

(3) Failure to Renew IMD Registration Pursuant to § 2-05:

Where an owner fails to renew a building’s registration as required in § 2-05(f)(2), the owner may be subject to a Class C violation civil penalty as follows:

<u>VIOLATION DESCRIPTION</u>	<u>SECTION OF LAW</u>	<u>CURE</u>	<u>PENALTY</u>
<u>Failure to Timely Renew Registration</u>	<u>29 RCNY § 2-05(f)(2)</u>	<u>Yes</u>	<u>\$5,000 for one year; \$10,000 for two years; \$17,500 for three years or more</u>

(4) Fines in Connection with Unreasonable Interference Pursuant to § 2-01(h):

A finding by the Loft Board that:

- (i) An owner unreasonably interfered with the tenant’s use of an IMD unit; or
- (ii) An owner unreasonably and willfully interfered with the tenant’s use of an IMD unit,

May subject the owner to a Class C civil penalty as follows:

<u>VIOLATION DESCRIPTION</u>	<u>SECTION OF LAW</u>	<u>CURE</u>	<u>PENALTY</u>
<u>Finding by the Loft Board of Unreasonable Interference with the Use of an IMD Unit</u>	<u>29 RCNY § 2-01(h)</u>	<u>No</u>	<u>\$2,500</u>
<u>Finding by the Loft Board of Unreasonable and Willful Interference with the Use of an IMD Unit</u>	<u>29 RCNY § 2-01(h)</u>	<u>No</u>	<u>\$5,000</u>

(5) Monthly Reports and Failure to Take Reasonable and Necessary Action to Legalize Building Pursuant to §§ 2-01.1(a)(1)(ii) and 2-01.1(b)(6):

An owner who is found:

- (i) By the Loft Board’s Executive Director to have violated the provisions of § 2-01.1(b)(6) of these Rules may be subject to a Class B civil penalty pursuant to § 2-01.1(b)(7) as follows; or
- (ii) To have failed to file monthly reports or to have made false statements in the monthly reports filed pursuant to § 2-01.1(a)(1)(ii),

May be subject to a Class B civil penalty as follows:

<u>VIOLATION DESCRIPTION</u>	<u>SECTION OF LAW</u>	<u>CURE within 30 days</u>	<u>PENALTY PER VIOLATION, UP TO \$17,500</u>
<u>Failure to Take Reasonable and Necessary Action: Failure to File an Application with DOB</u>	<u>29 RCNY §§ 2-01.1(b)(6)(i); 2-01.1(b)(7)</u>	<u>Yes</u>	<u>Up to \$1,000 per day</u>
<u>Failure to Take Reasonable and Necessary Action: Failure to Obtain a Building Permit</u>	<u>29 RCNY §§ 2-01.1(b)(6)(ii); 2-01.1(b)(7)</u>	<u>Yes</u>	<u>Up to \$1,000 per day</u>
<u>Failure to Take Reasonable and Necessary Action: Failure to Maintain a Current Work Permit</u>	<u>29 RCNY §§ 2-01.1(b)(6)(iii); 2-01.1(b)(7)</u>	<u>Yes</u>	<u>Up to \$1,000 per day</u>
<u>Failure to Take Reasonable and Necessary Action: Failure to Maintain a Temporary Certificate of Occupancy for the Residential Portion of the Building</u>	<u>29 RCNY §§ 2-01.1(b)(6)(iv); 2-01.1(b)(7)</u>	<u>Yes</u>	<u>Up to \$1,000 per day</u>
<u>Failure to Take Reasonable and Necessary Action: Failure to File Monthly Reports</u>	<u>29 RCNY § 2-01.1(a)(1)(ii)(D)</u>	<u>Yes</u>	<u>Up to \$1,000 per missing report</u>
<u>Failure to Take Reasonable and Necessary Action: Filing False Statements in Monthly Report</u>	<u>29 RCNY § 2-01.1(a)(1)(ii)(E)</u>	<u>No</u>	<u>\$4,000 per false statement</u>

(6) Fines in Connection with:

- (i) An owner who fails to comply with the access notice provision of § 2-01(g)(4)(iv);
- (ii) An occupant who unreasonably withholds access pursuant to § 2-01(g)(4)(iv);
- (iii) An owner who fails to file a Sales Record form after a sale of improvements pursuant to § 2-07(j) or a sale of rights pursuant to §§ 2-10(b) or 2-10(c)(4) within 30 days of sale;
- (iv) An owner who fails to report a change in the emergency number, managing agent information, owner’s address or ownership information pursuant to § 2-05(b)(10); or
- (v) An owner who fails to post the IMD notice pursuant to 29 RCNY § 2-05(b)(13),

May be subject to a Class A civil penalty as follows:

<u>VIOLATION DESCRIPTION</u>	<u>SECTION OF LAW</u>	<u>CURE within 30 days</u>	<u>PENALTY</u>
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<u>Failure to Comply with Access Notice Provisions</u>	<u>29 RCNY §§ 2-01(g)(1); 2-01(g)(2); 2-01(g)(4)(iv)</u>	<u>Yes</u>	<u>\$1,000</u>
<u>Occupant Unreasonably Withholds Access</u>	<u>29 RCNY §2-01(g)(4)(iv)</u>	<u>Yes</u>	<u>\$1,000</u>
<u>Failure to Timely File Sale of Improvements Form</u>	<u>29 RCNY § 2-07(j)</u>	<u>No</u>	<u>\$4,000</u>
<u>Failure to Timely File Sale of Rights Form</u>	<u>29 RCNY §§2-10(b) or 2-10(c)(4)</u>	<u>No</u>	<u>\$4,000</u>
<u>Failure to Report a Change in Ownership Information</u>	<u>29 RCNY § 2-05(b)(10)</u>	<u>No</u>	<u>\$4,000</u>
<u>Failure to Post IMD Notice</u>	<u>29 RCNY § 2-05(b)(13)</u>	<u>No</u>	<u>\$1,000</u>

§ 2. Clauses (C) and (D) of subparagraph (i) of paragraph (1) of subdivision (a) of section 2-01.1 of Title 29 of the Rules of the City of New York are amended to read as follows:

(C) Whether the owner timely obtained a building permit after issuance of the Loft Board certification pursuant to [§ 2-01(d)(2)(ix)] § 2-01(d)(2)(xi).

(D) Whether the building permit for the alteration that the Loft Board certified pursuant to [§2-01(d)(2)(ix)] § 2-01(d)(2)(xi) is in effect.

§ 3. Subparagraph (ii) of paragraph (1) of subdivision (a) of section 2-01.1 of Title 29 of the Rules of the City of New York is amended to read as follows:

(ii) Monthly Reports about Legalization Projects.

(A) Any IMD owner who has not been issued a final residential certificate of occupancy issued pursuant to MDL §_301 for the IMD units must file with the Loft Board a monthly report relating to the legalization projects in the building on the approved Loft Board form, as available on the Loft Board's website or at the offices of the Loft Board. In the case of IMD buildings owned by a cooperative or a condominium, the cooperative or condominium board is responsible for the filing of the monthly report. The report is due on the first business day of every month.

(B) The report must be signed by the owner of the IMD building and a registered architect or professional engineer.

(C) The information provided in the report may be used as evidence in connection with a Loft Board determination as to whether the owner has exercised all reasonable and necessary action to obtain a final residential certificate of occupancy.

(D) The Executive Director may issue a fine [of up to \$17,500] in accordance with § 2-11.1 of these Rules for failure to file the legalization report for each report not filed on the first business day of each month.

(E) The filing of a false statement in the monthly report may result in fines [of up to \$17,500] in accordance with § 2-11.1 of these Rules for each false statement in the monthly report.

§ 4. Paragraph (3) of subdivision (b) of section 2-01.1 of Title 29 of the Rules of the City of New York is amended to read as follows:

(3) *Hearings*. Hearings will be conducted by OATH Administrative Law Judges or ECB hearing officers, who will determine whether the owner has made a diligent, consistent and good faith effort to obtain a residential certificate of occupancy for the IMD [building] as required by Article 7-C of the MDL. Hearings conducted by OATH must be conducted in accordance with the rules and procedures governing OATH so long as they do not conflict with the Loft Board rules. Hearings conducted by an ECB hearing officer must be conducted following the procedures of ECB hearings.

When the OATH Administrative Law Judge or ECB hearing officer issues a [decision] finding that the owner has not exercised all reasonable and necessary action to obtain a final residential certificate of occupancy, he or she shall also recommend a fine [of up to \$17,500 for every day that the owner did not exercise all reasonable and necessary action to obtain a certificate of occupancy] in accordance with § 2-11.1 of these Rules. Such fine accrues 30 calendar days from the date of delivery by hand or 35 calendar days from posting by mail of the notice of an enforcement proceeding, and may continue to accrue until the owner demonstrates compliance with this section.

§ 5. Subparagraph (ii) of paragraph (6) subdivision (b) of section 2-01.1 of Title 29 of the Rules of the City of New York is amended to read as follows:

(ii) Where the Loft Board has issued certification pursuant to [§2-01(d)(2)(ix)] § 2-01(d)(2)(xi) of these rules, and an owner has failed to obtain an alteration permit within 3 months from the date of such certification or from the effective date of this rule, whichever is later, such failure to obtain the permit constitutes a rebuttable presumption that the owner is not engaged in taking reasonable and necessary action to obtain a residential certificate of occupancy or a certificate of occupancy for the residential portions of the building.

§ 6. Paragraph (7) of subdivision (b) of section 2-01.1 of Title 29 of the Rules of the City of New York is amended to read as follows:

(7) Upon finding a violation pursuant to paragraph (6) of this subdivision, the Loft Board's Executive Director may issue a notice to the owner stating an intent to find the owner in violation of its obligation to exercise all reasonable and necessary action. The Loft Board's Executive Director may issue a fine [of up to \$17,500 for every day that the owner does not

exercise all reasonable and necessary action to obtain a certificate of occupancy] in accordance with § 2-11.1 of these Rules.

The owner has the right to present to the Loft Board's Executive Director or his or her representative within 30 calendar days of delivery of the notice by hand, or 35 calendar days of the posting of the notice by mail, a response that includes information as to why the notice should be withdrawn and/or information regarding mitigating factors pursuant to paragraph (5) of this subdivision the owner wishes to be considered in connection with Executive Director's determination of the amount of the fine to be imposed.

Following the receipt of a timely response from the owner, the Executive Director may either withdraw the notice, or may impose a fine [of up to \$17,500 for every day that the owner has not exercised all reasonable and necessary action to obtain a certificate of occupancy] in accordance with § 2-11.1 of these Rules. Unless the owner first demonstrates compliance with this section, such fine begins to accrue 30 calendar days after delivery by hand or 35 calendar days after the posting of the notice by mail and continues to accrue until the owner demonstrates compliance with this section. If necessary, the owner may file an application for an extension of the code compliance deadlines, pursuant to § 2-01(b).

§ 7. Paragraph (2) of subdivision (f) of section 2-05 of Title 29 of the Rules of the City of New York is amended to read as follows:

(2) *Registration Renewals.* Renewal of registration pursuant to §2-11(b)(1)(i)(A) of these rules shall be required annually on or before July 1st. Prior to the processing of the registration renewal application, the landlord or the agent is required to pay all unpaid fines, late fees and registration and code compliance monitoring fees for prior registration periods at the rate set forth in §2-11(b)(9)(i) of these rules, as may be amended from time to time. Failure to timely pay such registration and code compliance monitoring fees may result in the imposition of late fees, and other civil penalties, in accordance with the terms and provisions of these rules, including, without limitation, §2-11(b)(1)(i)(D) and § 2-11.1.

§ 8. Paragraph (10) of subdivision (b) of section 2-05 of Title 29 of the Rules of the City of New York is amended to read as follows:

(10) For each building potentially subject to Article 7-C, the owner, the lessee of the whole building, if applicable, and the agent must each sign the registration application form thereby certifying to the truth, accuracy and completeness of the information contained therein. If the building is known by more than one address, the applicant shall list each address on the application form.

If the owner, lessee of the whole building or agent is a corporation, other than a corporation listed as exempt from the provisions of MDL § 325, the names, business, and residence addresses and phone numbers of each of its officers must be listed on the form.

Other officers, including treasurer or chief fiscal officer, and stockholders who own or control at least 10 percent of the corporation's stock, must be listed on a separate attachment.

If the owner, lessee of the whole building or agent is other than an individual or a corporation, the names, business and residential addresses and phone numbers for each member, general partner or participant in a partnership, joint venture or limited liability company must be listed on a separate attachment.

At least one of the phone numbers filed with the registration application form must be a confidential telephone number where a responsible party can reasonably be expected to be reached 24 hours a day, 7 days a week for emergencies. Such number(s) must be within 50 miles radius of New York City limits, and must be indicated on a separate signed sheet of paper filed with the registration application form. Such responsible party shall be twenty-one years or older, and shall reside within New York City or customarily and regularly attend a business office located in New York City. The emergency number shall be confidential [pursuant to the Freedom of Information Law (Public Officers Law § 84, et. seq.) as amended from time to time]. Any change in the emergency number, managing agent information, owner's address or ownership shall be sent to the Loft Board within 5 days of the change. The failure to report such change is a violation of the Loft Board rules and the owner may be subject to civil penalties [to civil penalties up to \$17,500.00.] in accordance with § 2-11.1 of the Loft Board Rules.

§ 9. Paragraph (13) of subdivision (b) of section 2-05 of Title 29 of the Rules of the City of New York is amended to read as follows:

(13) A notice, in the form prescribed by the Loft Board, as designated on the Loft Board's website, shall be posted in the lobby of every IMD building within five (5) business days after the issuance of the IMD Registration Number. Failure to post such notice or update the notice within 5 calendar days of a change in the information contained in such notice may subject the landlord to civil penalties [of up to \$17,500 per day.] in accordance with § 2-11.1 of the Loft Board Rules. Such notice must contain:

- (A) [the building] The building's address;
- (B) [the] The IMD Registration Number assigned by the Loft Board for the purpose of identifying the building;
- (C) [the] The contact information for the owner and managing agent; and
- (D) [the] The Loft Board's phone number.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Loft Board Fines (§ 2-11.1)

REFERENCE NUMBER: 2012 RG 034 (revised 4/10/13)

RULEMAKING AGENCY: Loft Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: April 10, 2013

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Code Compliance Deadline Rule (§§ 2-01, 2-03, 2-08)

REFERENCE NUMBER: DOB-13, 15, 39, 40

RULEMAKING AGENCY: Department of Buildings

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or

communities consistent with achieving the stated purpose of the rule; and

- (iii) Provides a cure period for some violations, but does not provide a cure period for other violations because a) code compliance violations pose a risk to public health and safety, b) certain violations arise from completed events, the consequences of which are immediate, which makes a cure period impracticable under the circumstances, or c) cure period would run counter to the proposed rule's goal of encouraging timely filing of documentation.

/s/ Ruby B. Choi
Mayor's Office of Operations

4/10/2013
Date