

NOTICE OF PUBLIC HEARING

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

Date / Time: July 12, 2012 at 2PM

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 July 12, 2012.
- 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 July 9, 2012.
- Written comments and summarized copies of the oral comments received at the hearing will be available on July 18, 2012 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 violation of the Loft Board rules. The proposed rule also shows the potential fine if a party defaults or if the 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>DEFAULT PENALTY</u>	<u>AGGRAVATED 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); 2-01(a)(7); 2-01(c)(2)</u>	<u>No</u>	<u>Up to \$1,000 per missed deadline</u>	<u>Up to \$1,000 per missed deadline</u>	<u>N/A</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>Up to \$5,000 per missed deadline</u>	<u>N/A</u>
<u>Failure to Meet Code Compliance Deadlines: §281(5) 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>Up to \$5,000 per missed deadline</u>	<u>N/A</u>
<u>Failure to Take Reasonable and Necessary Steps Obtain a Final Certificate of Occupancy</u>	<u>29 RCNY §2-01.1(b)(2) and (3)</u>	<u>No</u>	<u>\$1,000 to \$5,000 per day up to \$17,500 per violation</u>	<u>Up to \$5,000 per day up to \$17,500</u>	<u>N/A</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;
- (ii) An owner or prime lessee harassed an occupant pursuant to § 2-02(d)(1)(ii) and § 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) and § 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, filing false registration statement, refusal to consent to sublet, and tampering with mail, the landlord or prime lessee;

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>DEFAULT 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>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 i.e., Hazardous Conditions; Housing Maintenance Violations; Refusal to Make Repairs</u>	<u>29 RCNY §§2-02(d)(1)(ii) and 2-02(e)(3)(i)</u>	<u>No</u>	<u>\$3,000 to \$6,000 for each occurrence found to constitute harassment</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 i.e., Noise; Odors; Threat of Eviction; False Registration Statement; Refusal to Consent to Sublet</u>	<u>29 RCNY §§2-02(d)(1)(ii) and 2-02(e)(3)(i)</u>	<u>No</u>	<u>\$2,000 to \$5,000 for each occurrence found to constitute harassment</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 the registration of a building 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>DEFAULT PENALTY</u>	<u>AGGRAVATED 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>	<u>\$8,000 for one year; \$13,000 for two years; \$17,500 for three years or more</u>	<u>N/A</u>

(4) Failure to Take Reasonable and Necessary Action to Legalize Building Pursuant to § 2-01.1(a)(1)(ii) and (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 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</u>	<u>DEFAULT PENALTY</u>	<u>AGGRAVATED PENALTY: FAILURE TO CORRECT WITHIN 60 DAYS OF ISSUANCE OF VIOLATION</u>
<u>Failure to Take Reasonable and Necessary Action 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>\$1,000 per day up to \$17,500</u>	<u>\$2,000 per day up to \$17,500</u>	<u>\$3,000 per day up to \$17,500</u>
<u>Failure to Take Reasonable and Necessary Actions: 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>\$1,000 per day up to \$17,500</u>	<u>\$2,000 per day up to \$17,500</u>	<u>\$3,000 per day up to \$17,500</u>

<u>Failure to Take Reasonable and Necessary Actions: 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>\$1,000 per day up to \$17,500</u>	<u>\$2,000 per day up to \$17,500</u>	<u>\$3,000 per day up to \$17,500</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>\$1,000 per day up to \$17,500</u>	<u>\$2,000 per day up to \$17,500</u>	<u>\$3,000 per day up to \$17,500</u>
<u>Failure to Take Reasonable and Necessary Actions: Failure to File Monthly Reports</u>	<u>29 RCNY §2-01.1(a)(1)(ii) (D)</u>	<u>Yes</u>	<u>\$1,000 per missing report up to \$17,500</u>	<u>\$2,000 per missing report up to \$17,500</u>	<u>\$3,000 per missing report up to \$17,500</u>
<u>Failure to Take Reasonable and Necessary Actions: 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 up to \$17,500</u>	<u>\$6,000 per false statement up to \$17,500</u>	<u>N/A</u>

(5) Fines in Connection with:

- (i) Failure of owner to comply with access notice provision of section § 2-01(g)(4)(iv);
- (ii) Failure of a tenant to reasonably provide access pursuant to § 2-01(g)(4)(iv);
- (iii) Failure of owner to file a Sales Record form after a Sale of Improvements pursuant to § 2-07(j) or a Sale of Rights pursuant to Rule §§ 2-10 (b) or 2-10(c)(4) within 30 days of sale;

May subject the party 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>	<u>DEFAULT PENALTY</u>	<u>AGGRAVATED PENALTY: FAILURE TO COMPLY WITHIN 60 DAYS OF ISSUANCE OF VIOLATION</u>
-------------------------------------	------------------------------	-----------------------------------	-----------------------	-------------------------------	---

<u>Failure of Owner to Comply with Access Notice Provisions</u>	<u>29 RCNY §2-01(g)(4)(iv)</u>	<u>Yes</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$2,000</u>
<u>Failure of Tenant to Provide Access</u>	<u>29 RCNY §2-01(g)(iv)</u>	<u>Yes</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$2,000</u>
<u>Failure to Timely File Sale of Improvements Form</u>	<u>29 RCNY §2-07(j)</u>	<u>No</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$2,000</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>\$500</u>	<u>\$1,000</u>	<u>\$2,000</u>

§ 2. 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 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.

§ 3. 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] in accordance with § 2-11.1 of these Rules, for every day up to \$17,500 that the owner did not exercise all reasonable and necessary action to obtain a certificate of occupancy. 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.

§ 4. 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] in accordance with § 2-11.1 of these Rules, for every day up to \$17,500 that the owner does not exercise all reasonable and necessary action to obtain a certificate of occupancy.

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] in accordance with § 2-11.1 of these Rules, for every day up to \$17,500 that the owner has not exercised all reasonable and necessary action to obtain a certificate of occupancy. 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).

§ 5. 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.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526**

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

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

REFERENCE NUMBER: DOB-32

RULEMAKING AGENCY: Department of Buildings (Loft Board)

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

5/4/2012
Date

**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: Sale of Rights by Residential Occupants (§ 2-10)

REFERENCE NUMBER: 2011 RG 068

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: May 3, 2012