

## **Environmental Control Board**

### **Notice of Promulgation of Rule**

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the** Environmental Control Board (ECB) in accordance with Sections 1049-a and 1043 of the New York City Charter and Chapter 14 of Title 17 of the New York City Administrative Code. The ECB has amended its Department of Buildings (DOB) Penalty Schedule. The DOB Penalty Schedule is found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. It contains penalties for notices of violation issued by the New York City DOB. The rule was published in The City Record on March 13, 2015 and a public hearing was held on April 14, 2015.

### **Statement of Basis and Purpose of Final Rule**

ECB's rule has modified the Buildings Penalty Schedule, in order to adequately enforce existing laws and rules and reflect changes brought about by Local Law 141 (LL 141), which went into effect on December 31, 2014. LL 141 amended the Administrative Code of the City of New York ("Administrative Code"), the New York City Plumbing Code, the New York City Building Code, the New York City Mechanical Code and the New York City Fuel Gas Code. LL 141 amended existing requirements, added new requirements, and renumbered existing sections of the affected codes. In addition, unrelated to LL 141, ECB has modified the Buildings Penalty Schedule to reflect efforts by the Department of Buildings (DOB) to update existing violations in DOB rules by amending their sections of law and violation descriptions.

The ECB held a public hearing on April 14, 2015 regarding amendments to its Department of Buildings (DOB) Penalty Schedule found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. One representative from DOB and two (2) members of the public attended the April 14, 2015 public hearing. Neither member of the public presented testimony on the proposed rule at the public hearing. ECB received and considered one written comment on the proposed rule regarding amendments to its DOB Penalty Schedule.

The rule includes twelve changes or additions to the Buildings Penalty Schedule, related to:

- obtaining the relevant service equipment Certificate of Compliance prior to operation;
- operating, maintaining, testing, and inspecting elevators and conveying systems (e.g., escalators, moving walkways, chair lifts and amusement devices);
- providing notice when an elevator will be out of service due to repair work;
- tampering, removing, or defacing a Stop Work Order or Vacate Order prior to its rescission by the Commissioner of Buildings;
- failing to obey a Vacate Order;
- failing to conduct or file a final inspection of permitted work with the DOB; and

- damaging or removing trees in a Special Natural Area District without certification, authorization or special permit from the Department of City Planning.

The penalties for these violations fall within the guidelines for their respective classes of violations, as set forth in Section 28-202.1 of the Administrative Code. The statutory maximum for each class of violation is:

- Class 3 (lesser violations) - \$500,
- Class 2 (major violations) - \$10,000, and
- Class 1 (immediately hazardous violations) - \$25,000.

Subject to these statutory maximums, the penalties in the Buildings Penalty Schedule are calculated as follows:

- Where there is no default by a respondent, an Aggravated I Penalty is 2 ½ times the Standard Penalty and an Aggravated II Penalty is five times the Standard Penalty.
- In the case of a default by a respondent, an Aggravated I Default Penalty is ten times the Standard Penalty and an Aggravated II Default Penalty is set at the statutory maximum prescribed under law.
- The Default Penalty is five times the Standard Penalty.

New violations that are not Class 1 (immediately hazardous violations) may be indicated as curable in the penalty schedule.

[Deleted material is in brackets.]

New material is underlined.

**Section 1. The Environmental Control Board has amended the following charges in the Buildings Penalty Schedule in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to read as follows:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
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[27-185 & BC 3007.1] 28-116.4.1	Class 2	Operation of [an elevator without equipment use permit or] service equipment <u>without</u> Certificate of Compliance.	<b>Yes</b>	<b>Yes</b>	<b>500</b>	<b>Yes</b>	<b>2500</b>	<b>1250</b>	<b>5000</b>	<b>2500</b>	<b>10000</b>
[28-301.1] 28-304.1	Class 1	Failure to maintain [building in code-compliant manner: service equipment – elevator per BC 3001.2; 27-987] <u>elevator or conveying system.</u>	<b>No</b>	<b>No</b>	<b>1000</b>	<b>No</b>	<b>5000</b>	<b>2500</b>	<b>10000</b>	<b>5000</b>	<b>25000</b>
[28-301.1] 28-304.1	Class 2	Failure to maintain [building in code-compliant manner: service equipment – elevator per BC 3001.2; 27-987] <u>elevator or conveying system.</u>	<b>Yes</b>	<b>Yes</b>	<b>500</b>	<b>Yes</b>	<b>2500</b>	<b>1250</b>	<b>5000</b>	<b>2500</b>	<b>10000</b>
[28-301.1] 28-304.1	Class 3	Failure to maintain [building in code-compliant manner: service equipment – elevator per BC 3001.2; 27-987] <u>elevator or conveying system.</u>	<b>Yes</b>	<b>Yes</b>	<b>200</b>	<b>Yes</b>	<b>500</b>	<b>500</b>	<b>500</b>	<b>500</b>	<b>500</b>

**§ 2. The Environmental Control Board has amended the Buildings Penalty Schedule in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add three new charges after the entry in that schedule for NYC Admin. Code 28-303.7, Failure to file a complete boiler inspection report, to read as follows:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>28-304.6</u>	<u>Class 1</u>	<u>Failure to inspect or test elevator or conveying system.</u>	<u>No</u>	<u>No</u>	<u>1000</u>	<u>No</u>	<u>5000</u>	<u>2500</u>	<u>10000</u>	<u>5000</u>	<u>25000</u>
<u>28-304.6</u>	<u>Class 2</u>	<u>Failure to inspect or test elevator or conveying system.</u>	<u>Yes</u>	<u>Yes</u>	<u>500</u>	<u>Yes</u>	<u>2500</u>	<u>1250</u>	<u>5000</u>	<u>2500</u>	<u>10000</u>
<u>28-304.10</u>	<u>Class 2</u>	<u>Failure to provide notice of elevator to be out of service for alteration work.</u>	<u>No</u>	<u>No</u>	<u>2000</u>	<u>No</u>	<u>10000</u>	<u>5000</u>	<u>10000</u>	<u>10000</u>	<u>10000</u>

**§ 3. The Environmental Control Board has amended the Buildings Penalty Schedule in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by adding three new charges after the entry in that schedule for NYC Admin. Code 28-207.2.2, Unlawfully continued work while on notice of a stop work order, to read as follows:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
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<u>28-207.2.5</u>	<u>Class 1</u>	<u>Tampered with, removed or defaced a written posted Stop Work Order.</u>	<u>No</u>	<u>No</u>	<u>1000</u>	<u>No</u>	<u>5000</u>	<u>2500</u>	<u>10000</u>	<u>5000</u>	<u>25000</u>
<u>28-207.4</u>	<u>Class 1</u>	<u>Failure to obey a Vacate Order.</u>	<u>No</u>	<u>No</u>	<u>4800</u>	<u>No</u>	<u>24000</u>	<u>12000</u>	<u>25000</u>	<u>24000</u>	<u>25000</u>
<u>28-207.4.4</u>	<u>Class 1</u>	<u>Removed or defaced a written posted Vacate Order.</u>	<u>No</u>	<u>No</u>	<u>1000</u>	<u>No</u>	<u>5000</u>	<u>2500</u>	<u>10000</u>	<u>5000</u>	<u>25000</u>

**§ 4. The Environmental Control Board has amended the Buildings Penalty Schedule in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by adding one new charge after the entry in that schedule for NYC Admin. Code 28-116.1, Failure of permit holder to provide inspection access to and/or expose ongoing construction or work on an active and permitted worksite, to read as follows:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>28-116.2.4.2</u>	<u>Class 2</u>	<u>Failure to conduct or file a final inspection of permitted work with the Department.</u>	<u>Yes</u>	<u>Yes</u>	<u>800</u>	<u>Yes</u>	<u>4000</u>	<u>2000</u>	<u>8000</u>	<u>4000</u>	<u>10000</u>

**§ 5. The Environmental Control Board has amended the Buildings Penalty Schedule in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by adding one new charge after the entry in that schedule for Zoning Rules 42-53, Outdoor Ad sign in M Dist. exceeds surface area limits, to read as follows:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
ZR 105-20	Class 2	<u>Damaged or removed a tree within a Special Natural Area District without certification, authorization or special permit.</u>	<u>No</u>	<u>No</u>	<u>800</u>	<u>No</u>	<u>4000</u>	<u>2000</u>	<u>8000</u>	<u>4000</u>	<u>10000</u>