

**City of New York
Environmental Control Board**

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Environmental Control Board (ECB) proposes to amend its Department of Buildings (DOB) Penalty Schedule. This 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.

When and where is the Hearing? ECB will hold a public hearing on the proposed rule. The public hearing will take place at 2:00 p.m. on April 14, 2015. The hearing will be in the ECB Conference Room located at 66 John Street, 10th Floor, NY, NY 10038.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the ECB through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to Rules_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to: ECB, Attention: James Macron, Counsel to the Board, 66 John Street, 10th Floor, New York, NY 10038.
- **Fax.** You can fax written comments to ECB at 212-361-1900.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Elizabeth Nolan at 212-436-0708. You can also sign up in the hearing room before the hearing begins on April 14, 2015. You can speak for up to three minutes.

Is there a deadline to submit written comments? You may submit written comments up to April 14, 2015.

Do you need assistance to participate in the Hearing? You must tell ECB staff if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-436-0708. You must tell us by April 7, 2015.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at ECB's office located at 66 John Street, 10th Floor, New York, NY 10038.

What authorizes ECB to adopt this rule? Sections 1049-a and 1043 of the New York City Charter and Chapter 14 of Title 17 of the New York City Administrative Code authorize ECB to adopt this proposed rule. This proposed rule was not included in ECB’s regulatory agenda for this Fiscal Year because it was not contemplated when ECB published the agenda.

Where can I find the ECB’s rules? ECB’s rules are in Title 48 of the Rules of the City of New York.

What laws govern the rulemaking process? ECB must meet the requirements of Section 1043(b) of the Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and 1049-a of the Charter.

Statement of Basis and Purpose

ECB is proposing a rule to modify 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 proposes to modify 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 proposed 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 proposes to amend 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 (\$)
[27-185 & BC 3007.1] <u>28-116.4.1</u>	Class 2	Operation of [an elevator without equipment use permit or] service equipment <u>without</u> Certificate of Compliance.	Yes	Yes	500	Yes	2500	1250	5000	2500	10000

[28-301.1] <u>28-304.1</u>	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>	No	No	1000	No	5000	2500	10000	5000	25000
[28-301.1] <u>28-304.1</u>	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>	Yes	Yes	500	Yes	2500	1250	5000	2500	10000
[28-301.1] <u>28-304.1</u>	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>	Yes	Yes	200	Yes	500	500	500	500	500

§ 2. The Environmental Control Board proposes to amend 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 (\$)
28-304.6	Class 1	<u>Failure to inspect or test elevator or conveying system.</u>	No	No	1000	No	5000	2500	10000	5000	25000
28-304.6	Class 2	<u>Failure to inspect or test elevator or conveying system.</u>	Yes	Yes	500	Yes	2500	1250	5000	2500	10000
28-304.10	Class 2	<u>Failure to provide notice of elevator to be out of service for alteration work.</u>	No	No	2000	No	10000	5000	10000	10000	10000

§ 3. The Environmental Control Board proposes to amend 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 28-207.2.2, 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 (\$)
28-207.2.5	Class 1	<u>Tampered with, removed or defaced a written posted Stop Work Order.</u>	No	No	1000	No	5000	2500	10000	5000	25000

<u>28-207.4</u>	Class 1	<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>	Class 1	<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 proposes to amend 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 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>	Class 2	<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 proposes to amend 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 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>

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Amendment of Buildings Penalty Schedule (Local Law 141 Implementation)

REFERENCE NUMBER: 2015 RG 011

RULEMAKING AGENCY: Environmental Control 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: February 11, 2015

**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 Buildings Penalty Schedule (Local Law 141 Implementation)

REFERENCE NUMBER: OATH-ECB-53

RULEMAKING AGENCY: OATH-ECB

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 cure periods for some new violations that are not Class 1 (immediately hazardous violations).

/s/ Francisco X. Navarro
Mayor's Office of Operations

February 11, 2014
Date