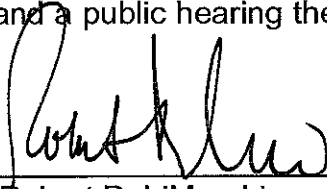


## NOTICE OF ADOPTION OF RULE

**NOTICE IS HEREBY GIVEN**, pursuant to the authority vested in the Commissioner of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter and Article 304 of Title 28 of the New York City Administrative Code, that the Department of Buildings hereby repeals subdivision (f) of Section 11-01 of Chapter 11 of Title 1 of the Rules of the City of New York and adds a new Section 103-02 to Subchapter C of Chapter 100 and amends Section 101-03 of Subchapter A of Chapter 100 of same, relating to elevator inspections and tests, filing requirements, penalties, and waivers and fees payable to the department of buildings.

This rule was first published on April 14, 2010, and a public hearing thereon was held on May 19, 2010.

Dated: 7/6/10  
New York, New York

  
Robert D. LiMandri  
Commissioner

Section 1. Subdivision (f) of Section 11-01 of Chapter 11 of Title 1 of the Rules of the City of New York, relating to Performance of inspections and filings of inspection reports, is REPEALED.

§2. Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new Section 103-02 to read as follows:

§103-02 Elevator inspections and tests, filing requirements, penalties and waivers.

(a) Scope. This rule implements Article 304 of Title 28 of the New York City Administrative Code ("Administrative Code") by specifying the periodic elevator inspection and testing requirements to be conducted by an approved elevator inspection agency on behalf of the owner and the processes through which the department shall regulate the filings of elevator inspection and test reports and elevator affirmations of correction and issue penalties and waivers for failure to file and/or late and untimely filing.

(b) References. See Sections 28-201.2.2, 28-202.1 and Article 304 of Title 28 of the Administrative Code.

(c) Definitions. For the purposes of this rule, the following terms shall have the following meanings:

(1) Approved elevator inspection agency. An elevator inspection agency, including its directors and inspectors, that currently holds or hereafter secures a Certificate of Approval from the department.

(2) Elevator. For the purposes of this rule, such term shall include elevators, escalators, moving walkways, material lifts, vertical reciprocating conveyors ("VRC"), dumbwaiters and other conveying systems.

(3) Filing deadline. For category 1, 3 and 5 periodic elevator inspection and test reports, forty-five (45) calendar days from the date of the inspection

(4) Final certificate. A certificate issued by the department authorizing the operation of an elevator following the satisfactory completion of an inspection and test.

(5) Inspection and test cycle.

(i) Category 1. Except as otherwise provided by the commissioner, January first through December thirty-first of each year.

(ii) Category 3. Except as otherwise provided by the commissioner, within three (3) years from the month of issuance of a final certificate for a new elevator or within three (3) years from the month of the most recent category 3 periodic inspection and test performed on an existing elevator.

(iii) Category 5. Except as otherwise provided by the commissioner, within five (5) years from the month of issuance of a final certificate for a new elevator or within five (5) years from the month of the most recent category 5 periodic inspection and test performed on an existing elevator.

(6) Late filing. An inspection and test report that is filed after the filing deadline.

(7) Owner. Any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises and/or elevator.

(8) Periodic inspection and test. For the purposes of this rule, such term shall mean an elevator inspection and test to be conducted in accordance with Table N 1 of Appendix K of the New York City Building Code ("Building Code") and this section by an approved elevator inspection agency on behalf of the owner.

(9) Waiver. Removal of the obligation to pay a penalty associated with a violation. A waiver does not result in dismissal of the underlying violation.

(d) Inspection and tests, reports and filing requirements. Periodic elevator inspections and tests conducted by approved elevator inspection agencies on behalf of the owner and reports filed by such agency or owner shall comply with Article 304 of Title 28 of the Administrative Code, paragraph (4) of subdivision (c) of Section 101-07 of Title 1 of these rules and the following:

(1) Category 1, 3 and/or 5 periodic inspections and tests shall be conducted during the inspection and test cycle.

(2) Category 1, 3 and/or 5 periodic inspection and test reports shall be submitted on forms supplied by the department and in such a manner as required by the commissioner by the filing deadline.

(e) Correction of defects and affirmation of correction filing requirements. In accordance with Section 28-304.6.6 of the Administrative Code, all defects found and reported on category 1 periodic inspection and test reports shall be corrected within forty five (45) business days of the filing of the report by an

approved elevator inspection agency or owner, with the exception of all hazardous conditions, which shall be corrected immediately. Within fifteen (15) business days following such forty five (45) day period, an affirmation of correction stating that all found and reported defects have been corrected shall be filed by same with the department on such forms and in such a manner as prescribed by the commissioner. Failure to comply with this subdivision shall be deemed a major violation.

(f) Acceptance of filings. Late filings of inspection and test reports and/or untimely filings of affirmations of correction shall be accepted by the department as filed upon payment of the appropriate civil penalties as set forth in subdivisions (h) and (i) of this section, if filed within twelve (12) months of the date the inspection and test was conducted or the date the affirmation was due. Reports and affirmations filed after such twelve (12) month period shall be deemed expired. In such cases, the appropriate civil penalties shall be paid, a new inspection and test shall be performed for the current inspection and test cycle and a new report filed in accordance with this section.

(g) Ten- (10) day notifications. In accordance with Section 28-304.6.1 of Title 28 of the Administrative Code, the department shall be notified by an approved elevator inspection agency on behalf of the owner at least ten (10) calendar days prior to the category 1 (escalators only), 3 and/or 5 periodic inspection and testing to be conducted by such approved elevator inspection agency. The commissioner may require that such agency provide ten- (10) calendar day notifications to the department's Elevator Division for all periodic inspections and tests if he or she deems it necessary.

(h) Civil penalties - owners of buildings that contain (1) or two (2) single residential units.

(1) Failure to file the inspection and test report. An owner who fails to file the category 1, 3 and/or 5 periodic inspection and test report for each elevator within twelve (12) months from the date of the inspection and test, pursuant to Article 304 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of one thousand dollars (\$1000.00) per elevator.

(2) Late filing of the inspection and test report. An owner who submits a late filing, but who provides proof that the inspection and test took place within the period for which the report was due, shall be liable for a civil penalty of fifty dollars (\$50.00) per month, per elevator, commencing on the day following the filing deadline and ending on the date of submission of an inspection and test report. The total penalty shall not exceed six hundred dollars (\$600.00) per elevator. For the purposes of this paragraph, "proof" shall mean a copy of the elevator inspection and test report for the inspection and test conducted during the applicable period

and a copy of the front and back of a canceled check(s) to the department for an elevator inspection and test report fee.

(3) Failure to file the affirmation of correction. An owner who fails to file the elevator affirmation of correction within twelve (12) months from the date the affirmation was due, stating that all category 1 defects found and reported on the inspection and test report have been corrected pursuant to Section 28-304.6.6 of the Administrative Code and subdivision (e) of this section, shall be liable for a civil penalty of one thousand dollars (\$1000.00) per elevator.

(4) Untimely filing of the affirmation of correction. An owner who fails to file such affirmation within sixty (60) business days from the filing of such report in accordance with subdivision (e) of this section, shall be liable for a civil penalty of fifty dollars (\$50.00) per month, per elevator, commencing on the day following the date the affirmation was due and ending on the date of submission of the affirmation. The total penalty shall not exceed six hundred dollars (\$600.00) per elevator.

(i) Civil penalties - owners of commercial buildings, mixed use buildings or buildings that contain more than two (2) residential units.

(1) Failure to file the inspection and test report. An owner who fails to file a category 1 periodic inspection and test report for each elevator within twelve (12) months from the date of the inspection and test, pursuant to Article 304 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of three thousand dollars (\$3000.00) per elevator. An owner who fails to file a category 3 or 5 periodic inspection and test report for each elevator within twelve (12) months from the date of the inspection and test, pursuant to Article 304 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of five thousand dollars (\$5000.00) per elevator.

(2) Late filing of the inspection and test report. An owner who submits a category 1 late filing, but who provides proof that the inspection and test took place within the period for which the report was due, shall be liable for a civil penalty of one hundred and fifty dollars (\$150.00) per month, per elevator, commencing on the day following the filing deadline and ending on the date of submission of a complete report. The total penalty shall not exceed one thousand eight hundred dollars (\$1800.00) per elevator. An owner who submits a category 3 or 5 late filing, but who provides proof that the inspection and test took place within the period for which the report was due, shall be liable for a civil penalty of two hundred and fifty dollars (\$250.00) per month, per elevator, commencing on the day following the filing deadline and ending on the date of submission of a complete report. The total penalty shall not exceed three thousand dollars

(\$3000.00) per elevator. For the purposes of this paragraph, "proof" shall mean a copy of the elevator inspection and test report for the inspection and test conducted during the applicable period and a copy of the front and back of a canceled check(s) to the department for an elevator inspection/test report fee.

(3) Failure to file the affirmation of correction. An owner who fails to file the elevator affirmation of correction within twelve (12) months from the date the affirmation was due, stating that all category 1 defects found and reported on the inspection and test report have been corrected pursuant to Section 28-304.6.6 of the Administrative Code and subdivision (e) of this section, shall be liable for a civil penalty of three thousand dollars (\$3000.00) per elevator.

(4) Untimely filing of the affirmation of correction. An owner who fails to file such affirmation within sixty (60) business days from the filing of such report in accordance with subdivision (e) of this section, shall be liable for a civil penalty of one hundred and fifty dollars (\$150.00) per month, per elevator, commencing on the day following the date the affirmation was due and ending on the date of submission of the affirmation. The total penalty shall not exceed one thousand eight hundred dollars (\$1800.00) per elevator.

(j) Challenge of a civil penalty. An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this section by providing written proof of a timely and complete inspection and test and filing and/or correction of defects and filing to the department. Examples of such proof shall include, but are not limited to a copy of the elevator inspection/test report for the inspection and test conducted during the applicable period and a copy of the front and back of a canceled check(s) to the department for an elevator inspection and test report fee. Challenges shall be made in writing within thirty (30) calendar days from the date of service of the violation by the department and sent to the office/unit of the department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the department.

(k) Waiver of penalties. An owner may request a waiver of penalties assessed for violation of Article 304 of Title 28 of the Administrative Code, predecessor provisions of the 1968 New York City Building Code and/or related rules enforced by the department. Requests shall be made in writing.

(1) Owner status.

(i) New owner. A new owner may be granted a waiver of penalties contingent upon the department's acceptance of the owner's proof that transfer of ownership to the new owner occurred after penalties were incurred. Such a waiver is limited to one of the

following circumstances:

(A) The new owner has obtained full tax exemption status from the New York City Department of Finance; or

(B) The new owner submits proof to the department (such as a certificate from the Department of Housing Preservation and Development) that he or she took title to the property as part of an economic development program sponsored by a government agency.

(ii) Government ownership. An owner may be granted a waiver of penalties upon submission of official documentation from a government entity affirming that the premises was owned in its entirety by the entity during the period for which a waiver is requested.

(iii) Bankruptcy. An owner may be granted a waiver of penalties upon submission of a copy of a bankruptcy petition, together with proof that either the department or the New York City Law Department was served with a "Notice of Bar Date".

(2) Device status. An owner may be granted a waiver of penalties contingent upon the department's acceptance of proof of the following:

(i) Removed or dismantled. That a permit was issued by the department for the removal or dismantling of the elevator(s) and that there was department sign-off, for removal only, indicating that the elevator was removed or dismantled prior to the inspection and test cycle for which the report was due.

(ii) New or replaced. That a final certificate was issued by the department as part of a new installation during the inspection and test cycle for which the report was due.

(iii) Work in progress. That there is work in progress for the replacement or installation of a new elevator or a major renovation requiring that the elevator be deactivated during the work. For the purposes of this subparagraph, "proof" shall mean the filing of an elevator application including a projected date of completion of work. Upon completion of such work, a new category 1 inspection and test report shall be filed in accordance with this section.

(3) Building status. An owner may be granted a waiver of penalties contingent upon the department's confirmation of the following:

(i) Demolished. That the full demolition of the building occurred prior to the inspection and test cycle for which the report was due and that such demolition was signed-off by the department and/or that a new building permit has been issued for the property.

(ii) Sealed or vacated. That the building was ordered to be sealed or vacated by a government agency (i.e. DOB, HPD, FDNY or OEM) or by court order prior to the expiration of the inspection and test cycle for which the report was due.

(l) Fees. Fees for filings related to elevators shall be as set forth in Section 101-03 of these rules and Table 28-112.7.2 of the Administrative Code.

§3. Section 101-03 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

|                                    |             |
|------------------------------------|-------------|
| <u>Elevator filings</u>            |             |
| • <u>Category 3 and 5</u>          | <u>\$40</u> |
| • <u>Affirmation of correction</u> | <u>\$40</u> |
| • <u>Waiver of penalties</u>       | <u>\$35</u> |

## **STATEMENT OF BASIS AND PURPOSE**

The foregoing rule is promulgated pursuant to the authority of the Commissioner of Buildings under sections 643 and 1043(a) of the New York City Charter.

The rule implements Article 304 of Title 28 of the New York City Administrative Code by specifying the periodic elevator inspection and test requirements to be conducted by an approved elevator inspection agency on behalf of the owner and the processes through which the Department will regulate the filings of inspection and test reports and elevator affirmations of correction and issue penalties and waivers for failure to file and/or late and untimely filing.

This rule establishes as major violations the failure to file and untimely filing of an elevator affirmation of correction in accordance with Sections 28-201.2.2, 28-202.1 and 28-304.6.6 of the Administrative Code.

Section 28-201.2.2 of the Administrative Code specifies that failure to perform elevator inspections and to file required reports is a major violation and Section 28-202.1(2) of the Administrative Code sets the limits on civil penalties for major violations.

This rule replaces and alters the terms of the department's Procedure & Policy Notice (PPN) 1/05, which governs the granting of waivers of assessed civil penalties to building owners.

This rule sets out new criteria under which new owners may be granted waivers. In order to qualify for a waiver of penalties that were issued prior to the owner taking title to the property, there must be evidence of a broader community benefit. Examples of evidence of a broader community benefit are that the new owner has obtained full tax exemption status from the New York City Department of Finance or has taken title to the property as part of an economic development program. By limiting the availability of waivers, the department hopes to eliminate a loophole in current law allowing a simple transfer of property to qualify as a basis for a waiver of penalties.

Section 3 of this rule establishes fees for various types of elevator filings that are required by rule.