



Promulgation Details for 1 RCNY 102-04

This rule became effective on February, 22, 2014.

Since such date, one or more amendments have been made to this rule. Each rule amendment has its own effective date and Statement of Basis and Purpose.

Below you will find one or more rule amendments (the most recent appearing at the top), followed by the original rule.

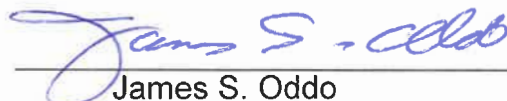
The effective date of each amendment and the original rule can be found at the top of each "NOTICE OF ADOPTION OF RULE."

NEW YORK CITY DEPARTMENT OF BUILDINGS

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, that the Department of Buildings hereby adopts the amendments to Sections 102-04, 103-01 and 103-05 of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding waiver of civil penalties for work without a permit and failure to file annual low pressure and high pressure boiler reports with respect to small businesses. This rule was first published on August 12, 2024, and a public hearing thereon was held on September 12, 2024.

Dated: 9/18/24
New York, New York


James S. Oddo
Commissioner

STATEMENT OF BASIS AND PURPOSE OF RULE

The Department amends its rules regarding waiver of civil penalties for work without a permit and failure to file low and high pressure boiler reports with respect to small businesses. The amendments to the definition and waiver provisions provide clarity to the public as to who is eligible for the small business waivers.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and Articles 213 and 303 of Title 28 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (***) indicate unamended text.

Section 1. Paragraph (10) of subdivision (d) of section 102-04 of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(d) Waiver of civil penalty for work without a permit. Notwithstanding any penalty waiver, a permit must be obtained for the unpermitted work. The Department may waive a civil penalty for work without a permit in the following instances:

* * *

(10) Where an owner of a business that employs fewer than one hundred employees (small business) has been issued a violation for unpermitted work and [such owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business, except that such waiver does not apply to a sidewalk shed that was installed without a permit or installed with a valid permit and the permit has expired] all of the following conditions are met:

- (i) The violation for which the waiver is requested was not issued for a sidewalk shed installed without a permit or a sidewalk shed installed with a valid permit and the permit has expired;
- (ii) The applicant demonstrates, in a form and manner determined by the Department, that the individual or entity requesting the waiver is the owner of the small business;
- (iii) The business provides goods or services onsite;
- (iv) The work without a permit violation was issued on or after November 20, 2022;
- (v) The applicant demonstrates, in a form and manner determined the by the Department, that the space in which the unpermitted work was performed is occupied exclusively by the small business;

- (vi) A small business waiver was not previously granted to the small business owner for unpermitted work performed on behalf of or for the benefit of such business; and
- (vii) The sole or primary purpose of the business is not filing representative or expeditor services, real estate, real estate development, property management, construction or other related services as determined by the Department.

§2. Paragraph (8) of subdivision (c) of section 103-01 of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(8) Small business. A business that employs fewer than one hundred persons and provides goods or services onsite.

§3. Clause (D) of subparagraph (i) of paragraph (6) of subdivision (f) of section 103-01 of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(D) Small business. An owner of a small business may be granted a [first-time] one-time waiver of [penalties where the owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business] the civil penalty for a violation issued for failure to file an annual boiler inspection report where all of the following conditions are met:

1. The applicant demonstrates, in a form and manner determined by the Department, that the individual or entity requesting the waiver is the owner of the small business;
2. The failure to file for which the violation was issued occurred on or after November 20, 2022;
3. The applicant demonstrates, in a form and manner determined by the Department, that the owner of the small business owns or has responsibility for the boiler and such boiler exclusively serves the space occupied by the small business;
4. A small business waiver was not previously granted to the small business owner for any boiler at the subject building that is owned by the small business or for which the small business is responsible;
5. A small business waiver was not previously granted to any small business for the boiler for which the waiver is being requested; and
6. The sole or primary purpose of the business is not filing representative or expeditor services, real estate, real estate development, property management, construction or other related services as determined by the Department.

§4. Paragraph (12) of subdivision (c) of section 103-05 of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(12) Small business. A business that employs fewer than one hundred persons and provides goods or services onsite.

§5. Clause (D) of subparagraph (i) of paragraph (6) of subdivision (i) of section 103-05 of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(D) Small business. An owner of a small business may be granted a [first-time] one-time waiver of [penalties where the owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business] the civil penalty for a violation issued for failure to file an annual boiler inspection report where all of the following conditions are met:

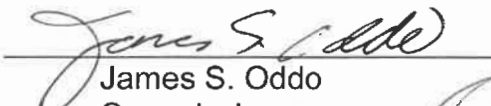
1. The applicant demonstrates, in a form and manner determined by the Department, that the individual or entity requesting the waiver is the owner of the small business;
2. The failure to file for which the violation was issued occurred on or after November 20, 2022;
3. The applicant demonstrates, in a form and manner determined by the Department, that the owner of the small business owns or has responsibility for the boiler and such boiler exclusively serves the space occupied by the small business;
4. A small business waiver was not previously granted to the small business owner for any boiler at the subject building that is owned by the small business or for which the small business is responsible;
5. A small business waiver was not previously granted to any small business for the boiler for which the waiver is being requested; and
6. The sole or primary purpose of the business is not filing representative or expeditor services, real estate, real estate development, property management, construction or other related services as determined by the Department.


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, that the Department of Buildings hereby adopts the amendments to Section 102-04 of Subchapter B of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding waivers of a civil penalty.

This rule was first published on June 5, 2023 and a public hearing thereon was held on July 6, 2023.

Dated: 7/19/23
New York, New York


James S. Oddo
Commissioner



Statement of Basis and Purpose of Rule

Section 102-04 of Title 1 of the Rules of the City of New York is amended to remove the civil penalty waiver provision for sidewalk sheds with expired permits. This amendment makes clear that civil penalties will be assessed for keeping a sidewalk shed up after the expiration of a valid permit. Pursuant to section 28-213.3 of the Administrative Code, before any sidewalk shed permit is issued or renewed, any penalty issued for maintaining a sidewalk shed after the permit has expired will have to be paid.

The Department expects that the threat of or actual issuance of violations for sheds with expired permits will result in more such sheds being dismantled and removed from City streets while still maintaining the necessary public protection.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and Article 213 of Chapter 2 of Title 28 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

Paragraphs (5) and (10) of subdivision (d) of section 102-04 of subchapter B of chapter 100 of Title 1 of the Rules of the City of New York are amended to read as follows:

(d) *Waiver of civil penalty for work without a permit.* Notwithstanding any penalty waiver, a permit must be obtained for the unpermitted work. The Department may waive a civil penalty for work without a permit in the following instances:

(5) Where a fence, [shed or] scaffold [(]or other temporary construction equipment[)], excluding sidewalk sheds, was installed with a valid permit and the permit has expired.

(10) Where an owner of a business that employs fewer than one hundred employees has been issued a violation for unpermitted work and such owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business, except that such waiver does not apply to a sidewalk shed that was installed without a permit or installed with a valid permit and the permit has expired.

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, that the Department of Buildings hereby adopts the amendments to Sections 102-01, 102-04, 103-01, 103-05 of Chapter 100 of Title 1 of the City of New York, regarding the implementation of the Mayor's Executive Order 2 titled, "Small Business Forward: Review and Reform of Compliance Costs on Businesses."

This rule was first published on August 19, 2022 and a public hearing thereon was held on September 19, 2022.

Dated: 10/13/22
New York, New York



Eric A. Ulrich
Commissioner

Statement of Basis and Purpose

The COVID-19 global pandemic caused financial instability for many small businesses in the City of New York. On January 4, 2022, in response to this crisis, the Mayor signed Executive Order 2 “Small Business Forward: Review and Reform of Compliance Costs on Businesses” (“EO2”). One goal of the reform was ensuring that small businesses face fewer unnecessary fines. EO2 called for the reform of existing violations and penalties issued by several city agencies.

The Department of Buildings was one of seven enforcement agencies which conducted a review of its existing violations that are most frequently enforced through the issuance of notices of violations, and to the extent practicable, identified those violations most frequently issued to small businesses that could be repealed or modified to reduce regulatory burdens, increase equity, and support small businesses. A total of 26 reforms for DOB were identified which required amendments to rules.

The specific proposed rules would (by relevant section):

Rule 102-01 – Enforcement of violations:

- Extend the cure period for violations of the New York City Construction Codes, Electrical Code, Zoning Resolution and rules that are classified as Class 2 “Major” and Class 3 “Lesser” violations from 40 to 60 days from the date of service of a Notice of Violation.
- Eliminate the following violations:
 - “Approved Place of Assembly plans not available for inspection” (Class 2).
 - “Failure to conspicuously post electrical work permit while work is in progress” (Class 3).
 - “Place of Assembly contrary to Approved construction documents” (Class 2).
 - “Electrical closet not dedicated to electrical distribution equipment only” (Class 2 and 3).
 - “Failure to provide cover/faceplate/lampholder/luminaire canopy for electrical outlet” (Class 2).
- Reduce the penalties for the following violations:
 - “Electrical work without a permit” (Class 3).
 - “Work without a permit” (Class 3).
 - “Failure to post or properly post permit for work at premises” (Class 2).
 - “Change in occupancy/use of C of O as per §28-118.3.1 - §28-118.3.2 by operating a Place of Assembly as per when current C of O does not allow such occupancy” (Class 2).
 - “Luminaires and Lampholders not installed in an approved manner” (Class 2).

Rule 102-04 – Civil penalties for work without a permit:

- Amend the grounds for waiver of civil penalties for work without a permit in subdivision (d) to specify that small businesses may receive a waiver of civil penalties for work without a permit after demonstrating, in a form and manner determined that by the Department, that it is a small business.

Rule 103-01 – Low-pressure boilers:

- Add a definition for “small business” to subdivision (c).
- Amended the grounds for waiver of penalties in paragraph (6) of subdivision (f) to specify that a small business may be granted a first-time waiver of penalties for failure

to file an annual boiler inspection report.

Rule 103-05 – High-pressure boilers:

- Add a definition for “small business” to subdivision (c).
- Amend the grounds for waiver of penalties in paragraph (6) of subdivision (i) to specify that a small business may be granted a first-time waiver of penalties for failure to file an annual boiler inspection report.

DOB’s authority for this rule is found in Sections 643 and 1043(a) of the New York City Charter and Articles 105, 201, 213 and 303 of Title 28 of the Administrative Code of the City of New York.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Paragraphs (2) and (9) of subdivision (c) of section 102-01 of the rules of the City of New York are amended to read as follows:

(c) *Correction and certification of correction.*

- (2) Violations classified as major or lesser must be corrected within [forty] sixty days from the date of service of the NOV [, except that such violations issued to one- or two-family homes must be corrected within sixty days of service of the NOV].
- (9) For violations classified as Class 3 or for those Class 2 violations eligible for a cure, respondents may avoid a hearing by submitting a certification of correction acceptable to and received by the Department no later than [forty] sixty days from the date of service of the NOV. [For such violations issued to one- or two-family homes, a certificate of correction acceptable to the Department must be submitted and received no later than sixty days from the date of service of the NOV.] For violations classified as Class 1, a certification acceptable to the Department must be received by the Department forthwith.

§ 2. Paragraph (1) of subdivision (d) of section 102-01 of the rules of the City of New York is amended to read as follows:

(d) *Mitigated and zero penalties.* Mitigated or zero penalties are available in the following circumstances under the following conditions.

(1) Cure.¹ An eligible violation may be cured by correction before the first scheduled hearing date at ECB. All violations that are designated as Class 3 violations are eligible for cure. Some, but not all, types of violations that are designated as Class 2 violations are eligible for cure. Those types of Class 2 violations that are eligible for cure will be indicated within the Buildings Penalty Schedule found below. In order to cure, a certificate of correction acceptable to the Department must be filed at the Department within [forty] sixty days from the date of service of the NOV. [For violations issued to one- or two-family homes, a certificate of correction acceptable to the Department must be submitted and received no later than sixty days from the date of service of the NOV.] A cure constitutes an admission of the violation; dispenses with the need for a hearing at ECB; constitutes a predicate violation for subsequent violations; and, consistent with the provisions of Section 28- 204.2, and with the provisions of the Buildings Penalty Schedule, results in a zero penalty. A violation that has been charged as an Aggravated I or Aggravated II violation is never eligible for a cure, even if there is a “Yes” in the “Cure” column in the Buildings Penalty Schedule for that violation description.

¹ Section 28-204.2 of the Administrative Code provides for a zero penalty for Lesser violations that are corrected within the prescribed, or cure, period. For purposes of this rule, certain Major violations will also be treated as eligible for cure to the extent that section 28-202.1 of the Administrative Code specifies no minimum penalty for such violations.

§ 3. Penalties for violations of 27-528, 27-3018(b), 28-105.1, 28-105.11, 28-105.12.2, 28-118.3, EC 110.25, EC 314.25, and EC 410.30 as set forth in section 102-01 of Title 1 of the Rules of the City of New York are repealed or amended 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 – Max Penalty
[27-528, BC 1024.1.3 (2008 code) & BC 1028.1.3 (2014 code)]	[Class 2]	[Approved Place of Assembly plans not available for inspection.]	[Yes]	[No]	[\$500]	[Yes]	[\$2,500]	[\$1,250]	[\$5,000]	[\$2,500]	[\$10,000]
27-3018(b)	Class 3	Electrical work without a permit.	Yes	Yes	[\$400] \$200	Yes	\$500	\$500	\$500	\$500	\$500
[27-3018(b)]	[Class 3]	[Failure to conspicuously post electrical work permit while work is in progress.]	[Yes]	[Yes]	[\$400]	[Yes]	[\$500]	[\$500]	[\$500]	[\$500]	[\$500]
28-105.1	Class 3	Work without a permit.	Yes	Yes	[\$500] \$250	Yes	\$500	\$500	\$500	\$500	\$500
28-105.11	Class 2	Failure to post or properly post permit for work at premises.	Yes	Yes	[\$625] \$300	Yes	[\$3,125] \$ 1,500	[\$1,563] \$750	[\$6,250] \$ 3,750	[\$3,125] \$1, 500	[\$10,000] \$7, 500
[28-105.12.2]	[Class 2]	[Place of Assembly contrary to Approved construction documents.]	[Yes]	[Yes]	[\$500]	[Yes]	[\$2,500]	[\$1,250]	[\$5,000]	[\$2,500]	[\$10,000]

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 – Max Penalty
28-118.3	Class 2	Change in occupancy/use of C of O as per §28-118.3.1 - §28-118.3.2 by operating a Place of Assembly as per when current C of O does not allow such occupancy.	Yes	No	[\$500] \$250	Yes	[\$2,500] \$1,250	[\$1,250] \$625	[\$5,000] \$3,125	[\$2,500] \$1,250	[\$10,000] \$6,250
[EC 110.25]	[Class 2]	[Electrical closet not dedicated to electrical distribution equipment only.]	[Yes]	[Yes]	[\$600]	[Yes]	[\$3,000]	[\$1,500]	[\$6,000]	[\$3,000]	[\$10,000]
[EC 110.25]	[Class 3]	[Electrical closet not dedicated to electrical distribution equipment only.]	[Yes]	[Yes]	[\$300]	[Yes]	[\$500]	[\$500]	[\$500]	[\$500]	[\$500]
[EC 314.25]	[Class 2]	[Failure to provide cover/faceplate/lampholder/luminaire canopy for electrical outlet.]	[Yes]	[Yes]	[\$500]	[Yes]	[\$2,500]	[\$1,250]	[\$5,000]	[\$2,500]	[\$10,000]
EC 410.30	Class 2	Luminaires and Lampholders not installed in an approved manner.	Yes	Yes	[\$500] \$250	Yes	[\$2,500] \$1,250	[\$1,250] \$625	[\$5,000] \$3,125	[\$2,500] \$1,250	[\$10,000] \$6,250

§ 4. Subdivision (d) of section 102-04 of subchapter B of Chapter 100 of Title 1 of the rules of the City of New York is amended by adding a new paragraph (10) to read as follows:

(10) Where an owner of a business that employs fewer than one hundred employees has been issued a violation for unpermitted work and such owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business.

§ 5. Paragraph 8 of subdivision (c) of section 103-01 of Title 1 of the rules of the City of New York is renumbered as paragraph (9), and a new paragraph (8) is added to read as follows:

(8) Small business. A business that employs fewer than one hundred persons.

§ 6. Subparagraph (i) of paragraph (f) of section 103-01 of Title 1 of the rules of the City of New York is amended by adding a new item (D), to read as follows:

(D) Small business. An owner of a small business may be granted a first-time waiver of penalties where the owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business.

§ 7. Paragraph 12 of subdivision (c) of section 103-05 of the rules of the City of New York is renumbered as paragraph (13), and a new paragraph (12) is added to read as follows:

(12) Small business. A business that employs fewer than one hundred persons.

§ 8. Subparagraph (i) of paragraph 6 of subdivision (i) of section 103-05 of the rules of the City of New York is amended by adding a new item (D), to read as follows:

(D) Small business. An owner of a small business may be granted a first-time waiver of penalties where the owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business.

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, that the Department of Buildings hereby adopts the amendments to Section 102-04 of Subchapter B of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding requests for override, reduction or waiver of a civil penalty.

This rule was first published on December 7, 2020 and a public hearing thereon was held on January 7, 2021.

Dated: 1/27/2021
New York, New York


Melanie E. La Rocca
Melanie E. La Rocca
Commissioner

Statement of Basis and Purpose of Rule

The amendment deletes language regarding the L2 form that was used to request an override, reduction or waiver of a civil penalty for work without a permit or for violation of a stop work order. These requests are now being handled through DOB NOW and not with an L2 form.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and Article 213 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Paragraph (1) of subdivision (f) of section 102-04 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (1) Any request for an override, reduction or waiver of a civil penalty must be in writing in a form and manner determined by the Department. [The applicant must submit a notarized “L2 Request for Overrides, Reductions or Waivers of Civil Penalties for Work without a Permit and Stop Work Order Violations” form.] In addition, the applicant must submit any supporting documentation required by the [form] Department or by paragraph (5) of this subdivision.

§ 2. Subparagraph (v) of paragraph (5) of subdivision (f) of section 102-04 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (v) Effect of inconsistent or incomplete documentation. If the information [on the L2 form] provided in the request for an override, reduction or waiver of a civil penalty or supporting documentation contradicts the description of work completed as stated on the violation, or if the [L2 form] request or supporting documentation is incomplete, the request for an override, reduction or waiver of the penalty may be denied.

NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts amendments to Subdivision (b) of Section 102-04 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York, regarding assessment of civil penalty for work without a permit.

This rule was first published on October 19, 2018 and a public hearing thereon was held on November 26, 2018. No comments were submitted either before or during the hearing.

Dated: 1.3.19
New York, New York


Rick D. Chandler, P.E.
Commissioner

Statement of Basis and Purpose

The rule amends portions of Title 1 of the Rules of the City of New York (RCNY) Section 102-04 to ensure that the specified civil penalties conform with Local Laws 156 and 158 of 2017 with regard to penalties related to work without a permit.

The Department of Buildings' authority for this rule is found in sections 643 and 1043 of the New York City Charter, and sections 28-213.1.1, 28-213.1.2 and 28-213.6 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

Subdivision (b) of Section 102-04 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (b) **Assessment of civil penalty for work without a permit.** The civil penalty for work without a permit is assessed as follows:
- (1) The civil penalty is based on occupancy status as shown on the Certificate of Occupancy or other Department records.
 - (2) Pursuant to § 28-213.1.1 of the Administrative Code, the penalty for work performed without a permit on a one-family or two-family dwelling (which includes inside a residential condominium or cooperative unit) is [four] the greater of six times the amount of the current fee payable for the permit, but not more than \$10,000, or [\$500] \$600, whichever is greater]. Where only part of the work has been performed without a permit, the Department will reduce the penalty proportionately according to the amount of work still to be performed at the time the Department issues a permit but not to an amount less than [\$500] \$600 or more than \$10,000.
 - (3) Pursuant to § 28-213.1.2 of the Administrative Code, the penalty for work performed without a permit on a building other than a one-family or two-family dwelling (which includes work on any common area of a condominium or cooperative building) is [either fourteen] the greater of twenty-one times the amount of the current fee payable for the permit, but not more than \$15,000, or [\$5,000] \$6,000, whichever is greater]. Where only part of the work has been performed without a permit, the Department will reduce the penalty proportionately according to the amount of work still to be performed at the time the Department issues a permit but not to an amount less than [\$5,000] \$6,000 or more than \$15,000.
 - (4) Expired permits or working without an after-hours variance. The penalty for work performed after the expiration of a permit for such work or for work performed after hours without a variance permit is [\$500] \$600 when such unpermitted work is performed on a one-family or two-family dwelling

or [~~\$5,000~~] \$6,000 when such unpermitted work is performed on a building other than a one-family or two-family dwelling.

- (5) Removal of illegal work. If work that was performed without a permit is removed, the penalty for the unpermitted work is [~~\$500~~] \$600 when performed on a one-family or two-family dwelling or [~~\$5,000~~] \$6,000 when performed on a building other than a one-family or two-family dwelling, even if the removal did not require a permit.
- (6) Fee-exempt properties. When unpermitted work is performed on properties not subject to permit fees pursuant to § 28-112.1 of the Administrative Code, the penalty for such unpermitted work is [~~\$500~~] \$600 when performed on a one-family or two-family dwelling or [~~\$5,000~~] \$6,000 when performed on a building other than a one-family or two-family dwelling.
- (7) Legalization of completed work. If work has been performed without a permit and an applicant seeks a permit for the unpermitted work before a notice of violation is issued, the penalty for such unpermitted work is [~~\$500~~] \$600 when performed on a one-family or two-family dwelling or [~~\$5,000~~] \$6,000 when performed on a building other than a one-family or two-family dwelling.
- (8) Pursuant to § 28-213.6 of the Administrative Code, within one (1) year after the Department imposes a penalty for work without a permit against (i) a building or (ii) a part thereof (if the owner of such part is not the owner of the building), the civil penalty for any subsequent violation related to work without a permit on the building, or a part thereof, is two (2) times the penalty that would otherwise apply for such violation, not to exceed the maximum allowable penalty.

NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the addition of Section 102-04 to Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding civil penalties for work without a permit and violation of stop work orders.

This rule was first published on December 5, 2013 and a public hearing thereon was held on January 10, 2014.

Dated: 1/14/14
New York, New York



Thomas Fariello, R.A.
Acting Commissioner

STATEMENT OF BASIS AND PURPOSE

Under article 105 of title 28 of the New York City Administrative Code, a written permit is required to conduct work in connection with any building, structure, sign, service equipment, or gas, mechanical, plumbing or fire suppression system in the city. The permit requirement is subject to certain exemptions as stated in section 28-105.4, including exemptions for “categories of work as described in department rules, consistent with public safety.”

Under Article 213, the New York City Department of Buildings (“Department”) must impose a civil penalty for work without a permit and adopt a rule describing the procedure for the assessment of such penalties. Such civil penalty is in addition to the penalties authorized under article 202 of the New York City Administrative Code. Section 28-213.2 also provides that a waiver or reduction of the penalty is available, pursuant to Department rules, to a subsequent bona fide purchaser of a building on which work without a permit was performed. The proof needed to show that an owner is a subsequent bona fide purchaser is further explained in this rule.

Under article 207, the Commissioner of the Department may issue a “stop work order” if building work is being performed in violation of applicable laws and rules or in a dangerous or unsafe manner. Under section 28-207.2.3, the Commissioner may rescind a stop work order under certain circumstances, including following the payment of civil penalties, or where the stop work order should not have been issued.

Section 1 of the rule repeals the existing civil penalties rule, which has been superseded in part by the Administrative Code and no longer reflects current practice.

Section 2 of the rule sets forth:

- When payment of a civil penalty for work without a permit or violation of a stop work order is required
- How civil penalties for work without a permit are assessed
- Requirements and procedures for overrides, waivers, and/or reductions of a civil penalty for work without a permit or violation of a stop work order
- Requirements for a refund of the payment of such civil penalty

The Department’s authority for these rules is found in sections 643 and 1043 of the New York City Charter and articles 105, 207, and 213 of the New York City Administrative Code.

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

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 33-01 of title 1 of the rules of the city of New York is REPEALED.

§ 2. Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new section 102-04 to read as follows:

§102-04 Civil penalties for work without a permit and for violation of stop work orders.

(a) Payment of civil penalty for work without a permit or violation of a stop work order. Except as otherwise provided in this section, payment of the civil penalty is required before:

- (1) Issuance of a permit for work in a particular space when work was performed without a permit in such space and the penalty for such unpermitted work has not been paid.
- (2) Renewal of a permit for work performed after the expiration of a permit when the penalty for such unpermitted work has not been paid.
- (3) Acceptance of a certificate of correction for a violation issued for work without a permit, even if removal of such work occurred or is required and the removal does not require a permit.
- (4) Rescission of a stop work order.

(b) Assessment of civil penalty for work without a permit. The civil penalty for work without a permit is assessed as follows:

- (1) The civil penalty is based on occupancy status as shown on the Certificate of Occupancy or other Department records.
- (2) Pursuant to § 28-213.1.1 of the Administrative Code, the penalty for work performed without a permit on a one-family or two-family dwelling (which includes inside a residential condominium or cooperative unit) is either four times the amount of the current fee payable for the permit or \$500, whichever is greater. Where only part of the work has been performed without a permit, the Department will reduce the penalty proportionately according to the amount of work still to be performed at the time the Department issues a permit but not to an amount less than \$500.
- (3) Pursuant to § 28-213.1.2 of the Administrative Code, the penalty for work performed without a permit on a building other than a one-family or two-family dwelling (which includes work on any common area of a condominium or cooperative building) is either fourteen times the amount of the current fee payable for the permit or \$5,000, whichever is greater. Where only part of the work has been performed without a permit, the Department will reduce the penalty proportionately according to the amount of work still to be performed at the time the Department issues a permit but not to an amount less than \$5,000.
- (4) Expired permits or working without an after-hours variance. The penalty for work performed after the expiration of a permit for such work or for work

performed after hours without a variance permit is \$500 when such unpermitted work is performed on a one-family or two-family dwelling or \$5,000 when such unpermitted work is performed on a building other than a one-family or two-family dwelling.

(5) Removal of illegal work. If work that was performed without a permit is removed, the penalty for the unpermitted work is \$500 when performed on a one-family or two-family dwelling or \$5,000 when performed on a building other than a one-family or two-family dwelling, even if the removal did not require a permit.

(6) Fee-exempt properties. When unpermitted work is performed on properties not subject to permit fees pursuant to § 28-112.1 of the Administrative Code, the penalty for such unpermitted work is \$500 when performed on a one-family or two-family dwelling or \$5,000 when performed on a building other than a one-family or two-family dwelling.

(7) Legalization of completed work. If work has been performed without a permit and an applicant seeks a permit for the unpermitted work before a notice of violation is issued, the penalty for such unpermitted work is \$500 when performed on a one-family or two-family dwelling or \$5,000 when performed on a building other than a one-family or two-family dwelling.

(c) Override of civil penalty for work without a permit. If an applicant has an outstanding violation for unpermitted work and seeks a permit for work in a space not related to the violation, the Department may issue a permit for work in the space not related to the violation. Any permit that is granted pursuant to this subdivision will not affect the outstanding violation or any civil penalty assessed for the unpermitted work.

(d) Waiver of civil penalty for work without a permit. Notwithstanding any penalty waiver, a permit must be obtained for the unpermitted work. The Department may waive a civil penalty for work without a permit in the following instances:

(1) Where an owner is a subsequent bona fide purchaser and the previous owner performed the unpermitted work, whether or not the subsequent bona fide purchaser received notice of the violation. The Department requires the following supporting documentation:

(i) Copy of the deed;

(ii) Notarized affidavit stating that there is no relationship between the previous owner and the subsequent bona fide purchaser. If the subsequent bona fide purchaser is an entity, the affidavit must be on the entity's letterhead and signed by the owner or an officer of the entity. The affidavit must include:

(A) The name of the subsequent bona fide purchaser;

(B) The location of the property;

(C) A statement that the subsequent bona fide purchaser did not receive the property as a gift;

(D) A statement that the subsequent bona fide purchaser had no interest or relationship with the prior owner at the time of purchase; and

(E) A statement that the subsequent bona fide purchaser is not acting in any way for the benefit of the prior owner.

(2) Where a violation for working without a permit has been dismissed.

(3) Where the Department of Housing Preservation and Development (HPD) or another agency performed emergency work as directed by the Commissioner pursuant to § 28-215.1 of the Administrative Code or where HPD or another agency performed work on unsafe buildings in accordance with § 28-216.8 of the Administrative Code.

(4) Where emergency work is performed without a permit, except for emergency work described in paragraph (3) of this subdivision, and an application for the work is filed with the Department within two business days after commencement of the work.

(5) Where a fence, shed or scaffold (or other temporary construction equipment) was installed with a valid permit and the permit has expired.

(6) Where a permit (other than for temporary construction equipment) expired and no work was performed after the permit's expiration.

(7) Where the city, state, or federal government or other government entity or public authority owns the property where the unpermitted work occurred.

(8) Where HPD third-party transfers occur after a court issues a foreclosure judgment allowing the City to transfer title of the foreclosed property to a new owner. The new owner must provide a letter from HPD stating that a third-party transfer occurred and that the Department must waive any penalties accrued before the closing date of the transfer.

(9) Multiple violations. Upon payment of the civil penalty and acceptance of a Certificate of Correction for unpermitted work for which multiple notices of violation have been issued, any outstanding civil penalties for the same unpermitted work at the same location will be waived.

(e) Waiver of civil penalty for failure to comply with a stop work order. The Department may waive a civil penalty for failure to comply with a stop work order in the following instances:

(1) Where the Commissioner determines that a stop work order has not been violated.

(2) Where a violation for failure to comply with a stop work order has been dismissed.

(f) Request for override, reduction, or waiver of a civil penalty.

(1) Any request for an override, reduction or waiver of a civil penalty must be in writing. The applicant must submit a notarized "L2 Request for Overrides, Reductions or Waivers of Civil Penalties for Work without a Permit and Stop Work Order Violations" form. In addition, the applicant must submit any supporting documentation required by the form or by paragraph (5) of this subdivision.

(2) The Department will review the application and issue a determination.

(3) An applicant may appeal the determination to the Commissioner of the borough (Borough Commissioner) in which the property is located or such Commissioner's designee.

(4) An applicant may appeal the Borough Commissioner's or his or her designee's determination by submitting it to the Borough Commissioner's office, where it will be forwarded to the Department's Associate Commissioner for Borough Operations or to the Associate Commissioner's designee. These final appeals must be submitted within 30 days from the date of the Borough Commissioner's or his or her designee's determination.

(5) Burden of proof and acceptable forms of supporting documentation.

(i) The burden of proof is on the applicant to show that a civil penalty should be overridden, reduced, or waived.

(ii) Supporting documentation for a request for an override of a penalty must consist of the following:

(A) A copy of approved plans;

(B) A completed job application; and

(C) A copy of the relevant violation and a dated color photograph of the area of the work at issue showing the current work area is unrelated to the violation;

(iii) Supporting documentation for a request for a reduction in a penalty must consist of:

(A) Affidavits from contractors or building supply warehouses concerning the unpermitted work at issue;

(B) A copy of the violation(s); and

(C) Any other documents required by the Commissioner.

(iv) Supporting documentation for a request for a waiver of the penalty must consist of a copy of the relevant violation and the following documents:

(A) For emergency work performed without a permit, a copy of the work application filed within two business days after commencement of the unpermitted emergency work;

(B) For a violation that has been dismissed, proof of dismissal;

(C) For subsequent bona fide purchasers claiming that unpermitted work was performed by a previous owner, the documents required as stated in subdivision (d) of this section; and

(D) Any other documents required by the Commissioner.

(v) Effect of inconsistent or incomplete documentation. If the information on the L2 form or supporting documentation contradicts the description of work completed as stated on the violation, or if the L2 form or supporting documentation is incomplete, the request for an override, reduction or waiver of the penalty may be denied.

(vi) The Commissioner may reject incomplete or illegible documents. The Commissioner reserves the right to audit all submissions.

(g) Refunds. If the civil penalty for performing unpermitted work is paid and the underlying violation is subsequently dismissed for any reason, the applicant will be eligible for a refund of the civil penalty payment upon submitting proof of dismissal and payment of the violation.