

## NEW YORK CITY DEPARTMENT OF BUILDINGS

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** The Department of Buildings (DOB) is proposing to amend its rules to provide specificity and uniformity as to the duties and inspections performed by a licensed construction superintendent.

**When and where is the hearing?** DOB will hold a public hearing on the proposed rule online. The public hearing will take place at 11am on 10/28/24.

- Join through Internet – Desktop app:

To join the hearing via your browser either click on the following URL link or copy and paste it into your browser's address bar. Then follow the prompts to either continue using the browser or download/open the Teams desktop app.

<https://events.gcc.teams.microsoft.com/event/d054c29f-133e-4853-a3e7-88b78c2c7eda@32f56fc7-5f81-4e22-a95b-15da66513bef>

Enter your name when prompted and click the **“Join now”** button. If you don't have computer audio or prefer to phone in for audio, select **“Phone audio”** under **“Other join options”** then click the **“Join now”** button. You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins. If you are using phone audio then follow the dial-in instructions when prompted.

If you have low bandwidth or inconsistent Internet connection, we suggest you use the Phone audio option for the hearing. This will reduce the possibility of dropped audio and stutters.

- Join through Internet - Smartphone app:

To join using the Microsoft Teams app on your smartphone, click on the following URL link from your phone to automatically open the Teams app. Note that the Microsoft Teams app must already be installed on your smartphone. It is available for free both in the Apple Store and Google Play.

<https://events.gcc.teams.microsoft.com/event/d054c29f-133e-4853-a3e7-88b78c2c7eda@32f56fc7-5f81-4e22-a95b-15da66513bef>

When prompted select **“Join meeting”**. Type your name and then select **“Join meeting”** again. You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins.

Alternatively, open the Teams app and select **“Join a meeting”**. Signing in with an account is not required. Type your name, the following Meeting ID and Passcode, then select **“Join meeting”**.

Meeting ID: 259 240 258 822

Passcode: 4rdzHs (Code is case sensitive)

- Join via phone only:

To join the meeting only by phone, use the following information to connect:

Phone: 646-893-7101

Phone Conference ID: 496 984 866#

You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins.

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

- **Website.** You can submit comments to the DOB through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [dobrules@buildings.nyc.gov](mailto:dobrules@buildings.nyc.gov).
- **Mail.** You can mail comments to the New York City Department of Buildings, Office of the General Counsel, 280 Broadway, 7th floor, New York, NY 10007.
- **Fax.** You can fax comments to the New York City Department of Buildings, Office of the General Counsel, at 212-566-3843.
- **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 by emailing [dobrules@buildings.nyc.gov](mailto:dobrules@buildings.nyc.gov) by 10/21/24 and including your name and affiliation. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

**Is there a deadline to submit comments?** Yes, you must submit comments by 10/28/24.

**What if I need assistance to participate in the hearing?** You must tell the Office of the General Counsel if you need a reasonable accommodation of a disability at the hearing. You can tell us by email at [dobrules@buildings.nyc.gov](mailto:dobrules@buildings.nyc.gov). Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by 10/15/24.

This location has the following accessibility option(s) available: Simultaneous transcription for people who are hearing impaired, and audio only access for those who are visually impaired.

**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/>. Copies of all comments submitted online, copies of all written comments and a summary of oral comments concerning the proposed rule will be available to the public at the Office of the General Counsel and may be requested by email at [dobrates@buildings.nyc.gov](mailto:dobrates@buildings.nyc.gov).

**What authorizes DOB to make this rule?** Sections 643 and 1043(a) of the City Charter and sections 3301.13.7, 3301.13.8, and 3301.13.13 of the New York City Building Code authorize DOB to make this proposed rule.

**Where can I find DOB's rules?** DOB's rules are in Title 1 of the Rules of the City of New York.

**What rules govern the rulemaking process?** DOB must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

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

This rule is intended to provide specificity and uniformity as to the duties and inspections performed by a construction superintendent licensed by the New York City Department of Buildings.

Section 3301.13.3 of the New York City Building Code requires a licensed construction superintendent to oversee certain construction and demolition projects, including the construction of new buildings, the full demolition of existing buildings, and large alterations in existing buildings.

Section 3301.13.7, item 1, of the New York City Building Code establishes a general duty for the construction superintendent to “maintain a safe jobsite” and “ensure compliance with” Chapter 33 of the New York City Building Code. Section 3301.13.7, item 2, of the New York City Building Code further establishes a general duty for the construction superintendent to “ensure compliance with approved documents.” Proposed Table 1 of this rule specifies the minimum set of tasks a construction superintendent is expected to perform in fulfilling their code obligations of maintaining a safe site, ensuring compliance with Chapter 33, and ensuring compliance with approved documents.

Section 3301.13.8 of the New York City Building Code further requires the construction superintendent to perform a daily inspection of the jobsite. The code does not require this inspection if a site safety manager or coordinator is required under Section 3310 of the New York City Building Code, which separately obligates the site safety manager or coordinator to perform a daily inspection of the jobsite. Section 3310-01 of these rules lists the specific items to be inspected by a site safety manager or coordinator. This rule proposes that the inspection performed by the construction superintendent, at sites that do not require a site safety manager or coordinator, is, at a minimum, the same as that performed by a site safety manager or coordinator; that is, such

inspection by a construction superintendent must comply with the same list of items to be inspected as specified in section 3310-01 of these rules.

Section 3301.13.13 of the New York City Building Code requires the construction superintendent to maintain a log summarizing the day's work, the construction superintendent's activities at the site, areas inspected, unsafe conditions observed, and actions taken to correct unsafe conditions, among other things. This proposed rule will require that the construction superintendent record in a log the results of the inspection performed pursuant to subdivision (d) of this rule. This rule does not specify any recording of the construction superintendent's fulfillment of the tasks specified in Table 1 of this rule. These tasks will be accounted for in what is already required by the code to be recorded in the log (that is, the construction superintendent's activities at the site, areas inspected, unsafe conditions observed, and actions taken to correct, among other things).

The rule also cross references other obligations of the construction superintendent, including the obligation under Section 3301.13.9 of the New York City Building Code to correct unsafe conditions, and includes statements to make clear the rule does not diminish any other responsibility the code imposes upon the construction superintendent.

The Department of Buildings' authority for these rules is found in sections 643 and 1043(a) of the City Charter and sections 3301.13.7, 3301.13.8, and 3301.13.13 of the New York City Building Code.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (\*\*\*) indicate unamended text.

“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.

Chapter 3300 of Title 1 of the Rules of the City of New York is amended by adding a new section 3301-04 to read as follows:

**§ 3301-04 Duties of the construction superintendent.**

**(a) Duties.** Construction superintendents, at a minimum, must perform the duties set out in this section at each job site for which the construction superintendent is responsible.

**(b) Definitions.** For purposes of this section, the following terms have the following meanings:

**Approved Documents.** The term “approved documents” has the same meaning as set forth in Section 3301.13.2 of the New York City Building Code.

**Competent person.** The term “competent person” has the same meaning as set forth in Section 202 of the New York City Building Code.

**Construction Superintendent.** The primary construction superintendent, designated pursuant to Section 3301.13.3 of the New York City Building Code, or the alternate construction superintendent designated pursuant to Section 3301.13.5 of the New York City Building Code when acting in place of the primary construction superintendent.

**License.** The term “license” has the same meaning as set forth in Section 28-401.3 of the New York City Administrative Code.

**Licensee.** An individual, sole proprietorship, partnership, corporation, business association or other person who holds a license issued by the department.

**Qualified person.** The term “qualified person” has the same meaning as set forth in Section 202 of the New York City Building Code.

**Registered design professional.** The term “registered design professional” has the same meaning as set forth in Section 28-101.5 of the New York City Administrative Code.

**Special inspector.** The term “special inspector” has the same meaning as set forth in Section 28-101.5 of the New York City Administrative Code.

**(c) Ensuring compliance.** In order to satisfy the requirements of items number 1 and 2 of Section 3301.13.7 of the New York City Building Code, the construction superintendent must, at a minimum, ensure compliance with the requirements listed in Table 1:

**Table 1: Compliance Requirements**

<u>The construction superintendent must ensure that:</u>	
<u>(1)</u>	<u>Work required to be performed by or supervised by a licensee is performed by or supervised by the appropriate licensee.<sup>1</sup></u>
<u>(2)</u>	<u>Required supervisors are present during activities required to be supervised by a competent person in accordance with Chapter 33 of the New York City Building Code or rules promulgated thereunder.<sup>2</sup></u>
<u>(3)</u>	<u>Inspections, monitoring, examinations, or similar checks requiring a registered design professional, qualified person, or competent person are performed by such person when required by Chapter 33 of the New York City Building Code or rules promulgated thereunder.<sup>2</sup></u>
<u>(4)</u>	<u>Work requiring a special inspection, as identified by the registered design professional of record, or work requiring an inspection, monitoring, examination, or similar check, as required by Chapter 33 of the New York City Building Code or rules promulgated thereunder, remains accessible until the inspection, monitoring, examination, or similar check has been successfully completed.<sup>3</sup></u>

(5)	<u>Work contingent upon successful completion of a special inspection, as identified by the registered design professional of record, or an inspection, monitoring, examination, or similar check, as required by Chapter 33 of the New York City Building Code or rules promulgated thereunder does not proceed until the inspection has been successfully completed.<sup>3</sup></u>
(6)	<u>Ongoing and completed work complies with approved documents.<sup>4</sup></u>
(7)	<u>When dewatering operations are occurring, compliance is maintained with the dewatering plan and dewatering monitoring program required by Section 3303.14.5 of the New York City Building Code.<sup>5</sup></u>
(8)	<u>When excavation operations are occurring or an open excavation is present at the site, compliance is maintained with the support of excavation plan required by Section 3304.4.1 of the New York City Building Code,<sup>4</sup> or where the work is exempt from a support of excavation plan, the work remains within the scope of the applicable exemption and maintains compliance with the applicable provisions of Section 3304.4 of the New York City Building Code.</u>
(9)	<u>When slurry is utilized to support an excavation, trench, or drilled or bored hole, compliance is maintained with the slurry installation procedures required by Section 3304.12 of the New York City Building Code.<sup>4</sup></u>
(10)	<u>When underpinning, or other methods of supporting buildings or adjacent property, are being installed, compliance is maintained with the installation procedures for the underpinning, or other methods of support, as specified on the construction documents required by Section 1817 of the New York City Building Code.<sup>4</sup></u>
(11)	<u>When structural steel, precast concrete, or structural aluminum is being installed, or when concrete formwork is being installed or removed, or concrete is being placed, compliance is maintained with the applicable provisions of Section 3305 of the New York City Building Code,<sup>6</sup> including but not limited to ensuring compliance is maintained with shop drawings, erection drawings, formwork design drawings, shoring and bracing drawings, reshoring schedules, and similar documents prepared by a registered design professional.<sup>4</sup></u>
(12)	<u>When cold formed steel is being installed, all requirements imposed upon the construction superintendent by Section 3305.8 of the New York City Building Code are complied with.</u>
(13)	<u>During concrete placement in cold or hot weather, procedures to implement the requirements of Sections 1905.12 and 1905.13 of the New York City Building Code are in place.</u>
(14)	<u>When masonry construction is occurring, compliance is maintained with the masonry bracing plan required by Section 2104.5 of the New York City Building Code.<sup>4</sup></u>
(15)	<u>During demolition operations, compliance is maintained with the demolition submittal documents required by Section 3306.5 of the New York City Building Code,<sup>4</sup> or where the work is exempt from demolition</u>

	<u>submittal documents, the work remains within the scope of the applicable exemption and maintains compliance with the applicable provisions of Sections 3306.7, 3306.8, and 3306.9 of the New York City Building Code.</u>
(16)	<u>During demolition operations requiring a demolition monitoring plan, compliance is maintained with the demolition monitoring plan required by Sections 3306.12 or 3306.13 of the New York City Building Code.<sup>5</sup></u>
(17)	<u>During demolition operations, compliance is maintained with the access and safety zone provisions of Sections 3306.2.1 and 3306.2.2 of the New York City Building Code.</u>
(18)	<u>Hoisting operations have ceased when the wind speed exceeds either 30 mph (3-second gust), the threshold specified by the manufacturer of the hoisting equipment, or the threshold indicated on approved documents, whichever is lower.</u>
(19)	<u>The site is secured for inclement weather.</u>
(20)	<u>The site is locked or otherwise secured at the end of the shift, with watchpersons or security monitoring in place when required by Section 3303.3 of the New York City Building Code.</u>
(21)	<u>For after-hours work, an after-hours variance has been obtained, and the work is in compliance with the requirements and stipulations for the after-hours work.</u>

**Notes to Table 1:**

1. For certain license types, supervision may be in the form of offsite supervision by the licensee in accordance with code and rules. The construction superintendent is not required to determine if individuals supervised by the licensee are employed by the licensee or qualified to perform the work of the licensee's trade.
2. The construction superintendent is not required to determine if the individual possesses the proper qualifications to serve as a supervisor or inspector. It is the responsibility of licensed professionals to practice within their authorized scope of practice. It is the responsibility of permit holders, contractors, and similar entities to designate only persons who meet the criteria of a competent person or qualified person for work requiring such persons.
3. Successful completion to be determined by the special inspector, registered design professional, qualified person, or competent person who performed the inspection, monitoring, examination, or similar check.
4. For elements of a plan, document, or specification inspected by a special inspector or registered design professional, the construction superintendent need only verify the inspection occurred and was passed by the special inspector or registered design professional.
5. Where the monitoring program calls for monitoring to be performed by a registered design professional, qualified person, or competent person, the construction superintendent need only verify such individual is present as required by the monitoring plan. The criteria of footnote 2 also applies.
6. Excluding provisions related to design calculations and the content of approved documents prepared by a registered design professional. This does not relieve the construction superintendent from their obligations per item #6 of this table.

**(d) Inspections.** Inspections required to satisfy the requirements of Section 3301.13.8 of the New York City Building Code must, at a minimum, include an inspection of all items prescribed in Section 3310.8.3.2 of the New York City Building Code and those prescribed in Tables 1 through 9 of Section 3310-01 of these rules. The inspections must be personally performed by the construction superintendent. Inspections specified in Tables 1 through 9 of Section 3310-01 of

these rules and required to occur at a frequency of “throughout the day” are, for purposes of this rule, required to be performed daily.

**Exception:** Where a site safety manager or coordinator has been designated for the job in accordance with Section 3310 of the New York City Building Code, the construction superintendent does not need to perform the inspections required by this subdivision. Site safety inspections must be performed by the site safety manager or coordinator in accordance with Section 3310 of the New York City Building Code.

**(e) Unsafe conditions.** Unsafe conditions discovered by the construction superintendent must be corrected in accordance with Section 3301.13.9 of the New York City Building Code.

**(f) Documenting in the construction super log.** The date, location, and result of inspections required by subdivision (d) of this section must be recorded in the construction superintendent log required by Section 3301.13.13 of the New York City Building Code.

**(g) Additional duties.** The construction superintendent must also fulfill all other duties assigned by code and rule, including but not limited to those specified in items 3 and 4 of Section 3301.13.7 of the New York City Building Code. Nothing in this rule prevents the permit holder from assigning additional duties to the construction superintendent, including, but not limited to, monitoring for compliance with other applicable laws and regulations when the construction superintendent is qualified or competent to do so in accordance with such other laws and regulations.

**(h) Does not diminish responsibility.** Nothing in this rule is intended to alter or diminish any obligation otherwise imposed by law on individuals other than a construction superintendent, including, but not limited to, the owner, permit holder, construction manager, general contractor, contractor, materialman, architect, engineer, land surveyor, site safety manager, site safety coordinator, concrete safety manager, or other party involved in a construction project to engage in sound engineering, design, and construction practices, and to act in a reasonable and responsible manner to maintain a safe job site.



**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

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

**RULE TITLE: Rules Relating to Duties and Inspections Performed by Licensed Construction Superintendents**

**REFERENCE NUMBER: DOB-180**

**RULEMAKING AGENCY: Department of Buildings**

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) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

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

September 13, 2024  
Date

**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:** Rules Relating to Duties and Inspections Performed by Licensed Construction Superintendents

**REFERENCE NUMBER:** 2024 RG 061

**RULEMAKING AGENCY:** Department of Buildings

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: September 12, 2024