

# 1 RCNY §102-04

## CHAPTER 100

### Subchapter B Enforcement

#### §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 the greater of six times the amount of the current fee payable for the permit, but not more than \$10,000, or \$600. 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 \$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 the greater of twenty-one times the amount of the current fee payable for the permit, but not more than \$15,000, or \$6,000. 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 \$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 \$600 when such unpermitted work is performed on a one-family or two-family dwelling or \$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 \$600 when performed on a one-family or two-family dwelling or \$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 \$600 when performed on a one-family or two-family dwelling or \$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 \$600 when performed on a one-family or two-family dwelling or \$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.
- (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, scaffold or other temporary construction equipment, excluding sidewalk sheds, 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.
- (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.
- (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 in a form and manner determined by the Department. In addition, the applicant must submit any supporting documentation required by the Department 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 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 request 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.