

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 relating to retaining walls.

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 1/9/25.

- 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/10d0d6cd-c835-4729-9d9c-6a57bbdf4959@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/10d0d6cd-c835-4729-9d9c-6a57bbdf4959@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: 279 388 341 768

Passcode: B8Zz3Jh9

- Join via phone only:

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

Phone: 646-893-7101

Phone Conference ID: 776 553 727#

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.
- **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.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up by emailing dobrules@buildings.nyc.gov by 1/2/25 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 1/9/25.

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. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by 12/26/24.

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 dobrules@buildings.nyc.gov.

What authorizes DOB to make this rule? Sections 643 and 1043(a) of the City Charter and Article 305 of Title 28 of the New York City Administrative Code authorize DOB to make this proposed rule. This proposed rule was included in DOB’s regulatory agenda for Fiscal Year ‘25.

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 Proposed Rule

The proposed rule amendments will clarify inspection procedures and requirements for documenting retaining wall conditions found during required inspections. They will also establish procedures for notifying the Department and the owner of unsafe conditions and for taking measures to safeguard the public.

In addition, the amendments propose to increase existing civil penalties for failure to file an acceptable report from \$1,000 per year to \$5,000 per year and for late filing of a report from \$250 per month to \$1,000 per month. The rule will also establish a new one-time penalty of \$2,000 for failure to correct conditions classified as safe with repairs and/or engineering monitoring.

The proposed rule also amends the procedure for requesting civil penalty waivers to conform to the waiver language in similar rules.

Specifically the proposed amendments:

- Establish requirements for photo documentation and mapping of conditions that are unsafe, safe with minor repairs or safe with repairs and/or engineering monitoring.
- Establish guidelines for report filing classifications.
- Clarify the requirements for unsafe and subsequent reports.
- Simplify the process to request a time extension for completing repairs.

The Department of Buildings’ authority for these rules is found in sections 643 and 1043 of the New York City Charter and Article 305 of Chapter 3 of Title 28 of the New York City Administrative 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.

Section 103-09 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

§103-09 Periodic Inspection of Retaining [Wall Inspections, Filing Requirements, Penalties and Waivers] Walls.

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

[(1) Acceptable report. A report of [condition assessment] critical examination filed by a qualified retaining wall inspector that meets the requirements of the Administrative Code and this [rule] section as determined by the Department.

[(2) Amended report. A report of [condition assessment] critical examination filed by a qualified retaining wall inspector who certifies that the unsafe conditions reported in the initial report have been repaired and that the retaining wall is no longer unsafe.

Appurtenance. A retaining wall element including, but not limited to, fences (including attachments and other hardware), lighting fixtures, railings, protective screening, signs, mesh wires for gabion walls, coping, and any non-structural components attached to or protruding from the retaining wall.

[(3) Close-up inspection. A physical examination performed on a retaining wall for the purpose of performing a [condition assessment] critical examination.

[(4) Condition assessment.] Critical examination. An examination conducted to review a retaining wall and all parts of it, including any appurtenances of such wall, to determine whether the retaining wall and its parts are either safe, unsafe, safe with minor repairs, or safe with a repair and maintenance program and whether, in the judgment of a qualified retaining wall inspector, it requires remedial work.

[(5) Filed [(in reference to a report)] report. A report is deemed filed with the Department when it has been received by the Department. The filed report must be completed in accordance with the provisions of paragraph (3) of subdivision (c) of this section.

[(6) Filing window. The one-year period during which an acceptable report for a particular retaining wall may be filed with the Department without penalty.

[(7) Fronting. The length of a retaining wall running parallel or near parallel to a public right-of-way.]

[(8) Height (of retaining wall). The vertical distance, measured from the ground surface above the toe of the wall to the top of the wall, wall stem, or wall step for tiered walls, including any parapets or fencing intended for retaining material.

[(9) Maintenance. The cyclical or recurring upkeep of a retaining wall including, but not limited to, vegetation removal, weep holes, cleaning wall drains, removing debris from

culverts, replacing dislodged chinking, painting soldier piles, cleaning and sealing concrete and wood facings.

Physical examination. Hands-on engineering inspection of retaining walls and appurtenance elements applying various methods of examination other than visual, including, but not limited to, sounding, probing, coring, testing, soil test pits and soil borings.

[(10)] Public right-of-way. A public highway, railroad, street, avenue, alley, public driveway, sidewalk, roadway or any other public place or public way.

[(11)] Qualified [Retaining Wall Inspector] retaining wall inspector (“QRWI”). A qualified retaining wall inspector as defined in section 101-07 of the rules of the Department.

[(12)] Repair. The non-routine fixing and restoring of wall elements to their intended function, including, but not limited to, resetting dislodged stonework, repointing stone masonry, re-grading or reseeding adjacent slopes, patching concrete spalls, mending damaged wire baskets, and repair or replacement of the drainage system.

[(13)] Report of [condition assessment] critical examination (“Report”). A written report filed with the Department by a [qualified retaining wall inspector] QRWI clearly documenting the conditions noted during the assessment; areas that need repair, maintenance, or engineering monitoring; a final wall rating; and any other requirements mandated by this rule.

[(14)] Report filing cycle. The five-year time interval established by the Commissioner for the filing of each successive report for each successive [condition assessment] critical examination of every retaining wall subject to the requirements of Article 305 of Title 28 of the Administrative Code.

[(15)] Retaining [Wall] wall. A wall that resists lateral or other forces caused by soil, rock, water, or other materials, thereby preventing lateral displacement and the movement of the mass by sliding to a lower elevation. Such term does not include basement walls and vault walls that are part of a building, and underground structures, including but not limited to utility vault structures, tunnels, transit stations and swimming pools.

[(16)] Safe condition. A [final] wall rating in which a retaining wall is determined to be fully functional with no action required at the time of assessment and that will not become unsafe during the next five years.

[(17)] Safe with minor repairs [or maintenance] (“SMR”) condition. A [final] wall rating in which a retaining wall is found at the time of assessment to be safe[,] but requires minor repair or routine maintenance within the next five years to correct minor deficiencies in order to minimize or delay further wall deterioration and remain safe.

[(18)] Safe with repairs and/or engineering monitoring (“SREM”) condition. A [final] wall rating in which a retaining wall is found at the time of assessment to be safe but requires repair within the next five years, but not less than one year, to correct [minor to severe] deficiencies in order to [minimize or delay further wall] prevent its deterioration [and remain safe] into an unsafe condition during that five-year period. In addition to repair, the [qualified retaining wall inspector] QRWI deems it necessary to regularly monitor and/or investigate further the retaining wall to determine the nature or cause of observed [distresses]distress and what action may be required.

Staggered filing cycle. The separate time intervals for filing reports as determined by borough beginning January 1, 2024, and continuing thereafter for each subsequent report filing cycle.

[(19)] Subsequent report. A technical examination report that is filed by a [qualified retaining wall inspector] QRWI after an acceptable report in order to change the status of a retaining wall for that reporting cycle to reflect changed conditions or the recommended time frame for repairs of SREM or unsafe conditions, except where an amended report should be filed.

[(20)] Unsafe condition. A condition of a retaining wall and any appurtenances found at the time of assessment that is a hazard to persons or property and requires [immediate abatement and/or public protection] repair within one (1) year of completion of critical examinations. In addition, any condition that was reported as SREM in a previous report and that is not corrected at the time of the current inspection must be reported as an unsafe condition.

(b) Responsibilities of qualified retaining wall inspectors.

- (1) A QRWI must conduct [condition assessments] critical examinations and file reports in accordance with this section and section 28-305.4 of the Administrative Code.
- (2) A QRWI must maintain records of inspections and tests for at least six years and must make such records available to the Department upon request.
- (3) A QRWI must maintain insurance coverage as set forth in paragraph (7) of subdivision (b) of section 101-07 of these rules. Copies of such insurance policies must be made available to the Department upon request.
- (4) A QRWI must be in good standing with the New York State Education Department and the New York City Department of Buildings.

(c) [Condition assessments] Critical examinations.

- (1) [In] Periodic inspection requirements. In order to maintain a retaining wall and its appurtenances in a safe condition, and in accordance with Article 305 of Title 28 of the Administrative Code, a [condition assessment of all parts] critical examination of any retaining [walls with any portion of the] wall [having]: (i) with a height of

ten feet or more at any [location] point along the length of such wall; and [fronting] (ii) which fronts on a public right-of-way must be conducted by a [qualified retaining wall inspector] QRWI once every five (5) years. The results of the [condition assessment] critical examination must be submitted to the Department in [the form of a report of condition assessment] accordance with the requirements of paragraph (3) of this subdivision.

(2) Inspection procedures.

(i) Before performing a [condition assessment of a retaining wall, the qualified] critical examination of a retaining wall [inspector], the QRWI retained by or on behalf of the owner must review the most recent report and any available previous reports, structural design or repair drawings, and violations. The Department will maintain a file of such reports submitted in conformance with [article] Article 305 of Title 28 of the Administrative Code[,] and provide copies upon payment of fees set forth in the rules of the Department.

(ii) Examination of retaining walls and appurtenances thereof pursuant to section 28-305.4 of the Administrative Code and this section must be performed by or under the direct supervision of a QRWI retained by the owner of such wall or a representative of the owner.

[(3)] (iii) The [qualified retaining wall inspector] QRWI must design and implement an assessment program that is specific to the retaining wall to be assessed, including, but not limited to, observations of the entire length of the wall from both sides of the retaining wall, data collection and method of evaluation. The assessment program and methods to be employed must be based on the consideration of the wall construction type, wall function, year built, location [and failure consequence], age of materials, specific exposure to environmental conditions, and the presence of specific details and appurtenances. Consideration must be given to the retaining wall's history of maintenance and repairs as described in previous reports and submittals to the Department, if applicable. [The assessment program must be provided to the Department for approval no fewer than 90 days prior to implementation. The Department reserves the right to object to the proposed program.] Professional Engineers, individuals with a bachelor's degree in engineering and three years of relevant experience, or individuals with five (5) years of relevant experience working under the QRWI's direct supervision may be delegated to perform selected inspection tasks other than the final inspection.

[(4)] (iv) The methods used to assess the retaining wall in question must permit a complete [condition assessment] critical examination of the wall, including, but not limited to, retaining wall type, cross sections, architectural finishes, selective probes, cores [and], measurements of wall dimensions, including, but not limited to, thickness and soil investigation.

- [(5)] (v) [The qualified retaining wall inspector] The QRWI must utilize a professional standard of care to assess the condition of the retaining wall and surrounding elements that impact the wall's stability. The known history of the retaining wall, the nature of the materials used, and the conditions observed will dictate the extent of the critical examination, provided, however, that the following elements must be assessed [as applicable] whenever they are present:
- [(i)] (A) Primary wall elements, including, but not limited to, piles and shafts, lagging, anchor heads, wire or geo-synthetic facing elements, bins or cribs, concrete, shotcrete, mortar, manufactured block or brick, placed stone and wall foundation material.
 - [(ii)] (B) Secondary wall elements and appurtenances, including, but not limited to, wall drains and water management systems, architectural facing, traffic barrier, fencing, roads, sidewalks, shoulders, upslope, downslope, lateral slope, vegetation, culverts, curbs, berms and ditches.
- [(6)] (vi) The [qualified retaining wall inspector] QRWI must amend the scope of the [condition assessment] critical examination and add additional testing and investigation as required to characterize wall distresses, overall performance or if distresses warrant additional investigations.
- [(7)] (vii) During the course of the [condition assessment] critical examination, photographs must be taken and [sketches] maps made to document the exact location of all distresses that require repair, maintenance, or monitoring, or that cause a retaining wall to have a final wall rating of unsafe, SREM, or SMR.
- [(8)] (viii) Upon the discovery of an unsafe condition, the [qualified retaining wall inspector] QRWI must immediately notify the Department [by calling 311 and then calling the Department directly with the 311 complaint number within 24 hours of discovering the] and the owner of the property on which the retaining wall is located. The QRWI must identify the location of any unsafe condition[.], advise the owner on the appropriate protective measures to be taken, and include the recommended type and location of public protection in the notification to the Department.
- [(9)] The condition assessment must include close-up inspections of the retaining wall. It is not acceptable to base a condition assessment on a drive-by inspection or a prior report without a close-up inspection of the retaining wall.]
- (ix) A critical examination is complete when the QRWI has conducted a final physical inspection to determine that the retaining wall conditions described in the report are consistent with actual conditions. Such final inspection must, at a minimum, include an in-person visual examination of the entire

length from both sides of the retaining wall. A drive-by inspection is not acceptable.

[(d)] (3) Report requirements.

[(1)] (i) The [qualified retaining wall inspector] QRWI must file a written report of critical examination with the Department and submit a copy to the owner of the retaining wall [a written report of condition assessment]. The report must clearly document all conditions noted during the assessment and state that the assessment was performed and completed in accordance with the Administrative Code and this [rule] section. [An] A separate acceptable report [may] must be prepared and filed for [multiple owners where a retaining wall which is required to comply with article 305 of Title 28 of the Administrative Code and this rule spans numerous blocks and lots] each property with a retaining wall that meets the conditions set forth in paragraph (1) of this subdivision.

[(2)] (ii) Technical information in the report must adhere to and follow the sequence and the labeling of the report requirements [as] listed in [paragraph (3)] subparagraph (iii) of this [subdivision,] paragraph, and must be provided on such forms and in such format as the Department requires. Additional information may be provided. [All items in subparagraphs (i) – (xiv) of paragraph (3) must be listed in the report.] If a requirement is not applicable, this must be indicated on the report under the relevant number.

[(3)] (iii) The report must include an executive overview that consists of a summary of findings and recommendations, a concise statement of the scope of the assessment and findings, the conclusions and recommendations, and a final wall rating that categorizes the retaining wall as “safe,” [“safe with minor repairs or maintenance”, “safe with repairs and/or engineering monitoring”] “SMR,” “SREM,” or “unsafe.” The report must also include, but not be limited to:

[(i)] (A) The address, any a.k.a. addresses, the Block and Lot number, the Building Identification Number (“BIN”), when applicable, for the block and lot on which the retaining wall is located, and the location from the nearest cross street [and a copy of the Property Profile Overview from the Buildings Information System (“BIS”) found on the Department’s website];

[(ii)] (B) The name, mailing address and telephone number of the owner of the retaining wall, or, if the owner is not an individual, the name, mailing address, telephone number, and position/title of a principal of the owner;

(C) A detailed description of the retaining wall, including the height, plan and section dimensions, construction type, all materials present, age, and type of veneer if applicable;

[(iii)] (D) A detailed description of any maintenance, repairs, or the results of engineering monitoring performed to the retaining wall since the previous report, including but not limited to foundation settlement, bulging or cracking of the retaining wall, movement of any elements of the remaining wall or appurtenances, or other defects or changes;

[(iv)] (E) A detailed description of the scope and procedures used in making the [condition assessment that should include:] critical examination;

(F) The following information:

[(A)] The dates of start and completion of the condition assessment;]

[(B)] 1. The extent and location of all physical examinations and tests performed;

2. The names, addresses, telephone numbers, and license or registration numbers of contractors and consultants involved in the critical examination;

[(C)] 3. A location or plot plan of a discernible scale and with a north arrow that shows the entire earth-retaining length of the wall[.];

4. [all] All structures located on the [block or] lot or on the adjacent lots and within the zone of influence of the wall[, including]. The information provided shall include the number of stories and the type of occupancy of all structures, and [any and] all public rights-of-way [adjacent to the retaining wall; and];

[(D)] locations and] 5. The dates [of close-up inspections and tests performed;] when the critical examination was started and completed and when tests were performed; and

6. Dated photo documentation of the QRWI or, where applicable, persons supervised by the QRWI as permitted by this section, performing physical examinations;

[(v)] (G) At least one cross-section of the retaining wall with details adequate to indicate the following:

- [(A)] 1. Retaining wall construction type;
- [(B)] 2. Architectural finishes or surface treatment;
- [(C)] 3. Maximum exposed wall height;
- [(D)] 4. Height of earth on each side of the retaining wall;
- [(E)] 5. Average vertical distance from the public right-of-way to cut wall toe or ground-line at the top of the fill wall;
- [(F)] 6. Horizontal distance to wall face from the edge of the public right-of-way;
- [(G)] 7. Wall face angle (batter) measured from the vertical;
- [(H)] 8. Maximum earth retaining length of the wall;
- [(I)] 9. Surcharges applied to the wall; and
- [(J)] 10. Additional cross-sections when the wall geometry [and/]or plumbness changes;

(H) A description, classification and the location of each significant condition observed, including deterioration and any movement detected. The description must also include a list of all appurtenances and their condition. Each condition must be classified as safe, unsafe, SMR, or SREM. If the retaining wall structure is classified as unsafe, SMR, or SREM, the compliance report must include the locations and descriptions of all unsafe, SREM, or SMR conditions. If unsafe conditions are noted, the report must recommend the type and location of public protection or clearly delineate the extent of areas that have been cordoned off and the methods used. Photographs must be labeled and the report must include key plans and locator drawings documenting these conditions. Guards and railings must be inspected to ensure that their components, including balusters, intermediate railings, and panel fillers, are positively secured against movement, such as by welds, bolts, or screws. If any guard or railing is found not to be positively secured, the condition must be classified as unsafe and made safe pursuant to the requirements of paragraph (5) of this subdivision;

[(vi) A description of each significant distress observed with supporting photographic documentation. Distresses must be mapped using gridlines enabling all distresses to be positively located;]

[(vii)] (I) An analysis of the [cause of each significant distress] causes of the conditions reported as unsafe or SREM;

[(viii)] A final wall rating that categorizes the retaining wall as “safe,” “safe with minor repairs or maintenance,” “safe with repairs and/or engineering monitoring” or “unsafe.” A detailed description of the overall rating and factors attributing to the rating assigned must accompany the final wall rating.]

(J) A detailed status report of maintenance work performed up to the date of submission of the report and the maintenance plan implemented for the retaining wall;

[(ix)] (K) Where a retaining wall is categorized with a final wall rating of [safe with repairs and engineering monitoring] SREM:

[(A)] 1. A plan detailing the proposed monitoring program;

[(B)] 2. The name of the engineer performing the monitoring; [and]

[(C)] 3. A stability analysis of the retaining wall that reports a [“]factor of safety[”] which shows that the wall is stable under current and expected loading conditions[.]; and

4. If only repairs are required, with no monitoring, a statement to that effect.

[(x)] (L) A comparison of currently observed conditions with conditions observed during the previous [report filing cycle] examinations, including the status of the repairs or maintenance performed with respect to the prior conditions. The following must be included and discussed:

[(A)] 1. Work permit numbers relating to repairs performed;

[(B)] 2. Job numbers, status and sign-off dates for any retaining wall related jobs, where applicable; and

[(C)] 3. Violation numbers of any open Environmental Control Board (“ECB”) violations associated with the retaining wall and the status of the repairs of the conditions cited in the ECB violations.

[(xi) Detailed recommendations] (M) Recommendations for repairs or maintenance [for retaining walls with final wall ratings of “safe with minor repairs or maintenance” or “safe with repairs and/or

engineering monitoring,"] of conditions classified as unsafe, SMR or SREM, including:

1. If a retaining wall is categorized as SREM:

[(A)] A. The [recommended] QRWI must provide the time frame for [such] any required repairs or maintenance to be [performed, which must indicate the date by which the work will be performed] completed (MM/DD/YYYY) to prevent the conditions from becoming unsafe and not the date on which work is planned or scheduled; and

[(B)] B. Time frames of less than one (1) year, "ASAP," or "immediately," will not be accepted.

2. If a retaining wall is categorized as unsafe:

A. The QRWI must provide the time frame for repairs to be completed to bring the retaining wall to SREM, SMR, or safe status and must indicate the date by which the work will be completed (MM/DD/YYYY); and

B. Time frames of more than five (5) years will not be accepted.

[(xii)] (N) A list and description of the work permits required to accomplish the necessary work. If no work permits will be required, the reason must be indicated;

(O) All photographs must be dated, printed in color, clearly legible, and high resolution. Digital photos must be a minimum of 800 x 600 pixels. Photographs must be arranged into PDF no larger than 11" x 17". The following photos must be submitted:

[(xiii)] 1. Elevation photos. Color photographs of [the retaining wall and] at least one view of the entire [street front] public right-of-way facing elevation for all reports, regardless of the retaining wall's [final wall rating. Photographs must be at least 3" x 5" (76mm x 127mm) in size, unless otherwise requested by the Department. The photographs must be dated and both the original photographs and all required copies shall be in color. The page/sheet size for attachments must not exceed 11" x 17" (280mm x 430mm).] filing condition;

2. Representative photos. Color photographs showing the general conditions of the retaining wall must be included with

the report. Additionally, photographs of the high side of the retaining wall, including ground conditions immediately behind and in the front of the retaining wall are also required.

3. Detailed condition photos. Color photographs of specific conditions must be clearly labeled and indicate the status designation. The locations of conditions required by item H of this subparagraph (iii) must be provided.

A. All SREM, SMR, and unsafe conditions must be cataloged.

B. If retaining wall status is safe, submit a minimum of three typical conditions.

(P) The classification of the retaining wall for the current report filing cycle, as determined by the following guidelines:

1. If there are no unsafe conditions, no conditions that are SREM or SMR, then the retaining wall is classified as safe.

2. If there is at least one unsafe condition, then the retaining wall must be classified as unsafe.

3. If there is at least one condition that is SREM and there are no unsafe conditions, then the retaining wall must be classified as SREM.

4. If there is at least one condition that is SMR and there are no unsafe or SREM conditions, then the retaining wall must be classified as SMR.

5. A report may not be filed describing the same condition at the same location as SREM for two consecutive report filing cycles. The QRWI must certify that all of the conditions identified in the previous report as requiring repair have been corrected, or the retaining wall must be classified as unsafe;

[(xiv)] (Q) The seal and signature of the [qualified retaining wall inspector] QRWI who performed the critical examination, or under whose direct supervision the [condition assessment] critical examination was performed.

[(4) All reports and supporting documents must be submitted to the Department in an electronic format.]

[(e)] (4) Report filing requirements.

- [(1)] (i) The requirements of this rule apply to owners of retaining walls with a height of ten feet or more and fronting a public right-of-way. The Commissioner will determine which additional retaining walls and/or parts thereof are required to file in accordance with this section.
- [(2)] (ii) Owners of retaining walls who are required to file a report must do so once during each five-year report filing cycle established by the Department, depending on the borough, as described in [subsection (5)] subparagraph (v) below. [The next complete report filing cycle runs from January 1, 2014 to December 31, 2018.]
- [(3)] (iii) An acceptable report must be filed within the applicable one-year filing window to avoid a late filing penalty.
- [(4)] (iv) The report must be submitted to the Department along with a filing fee as specified in the rules of the Department.
- [(5)] (v) Staggered inspection cycle. Beginning January 1, [2014] 2024 an acceptable report [for each retaining wall to which this rule applies] is due in accordance with the following [filing] windows:
- [(i)] (A) For retaining walls located within the Borough of the Bronx, an acceptable report must be filed within the [filing] one-year window starting January 1, [2014] 2024 and ending December 31, [2014] 2024, and every fifth year thereafter.
- [(ii)] (B) For retaining walls located within the Borough of [the] Manhattan, an acceptable report must be filed within the [filing] one-year window starting January 1, [2015] 2025 and ending December 31, [2015] 2025, and every fifth year thereafter.
- [(iii)] (C) For retaining walls located within the Borough of Staten Island, an acceptable report must be filed within the [filing] one-year window starting January 1, [2016] 2026 and ending December 31, [2016] 2026, and every fifth year thereafter.
- [(iv)] (D) For retaining walls located within the Borough of Queens, an acceptable report must be filed within the [filing] one-year window starting January 1, [2017] 2027 and ending December 31, [2017] 2027, and every fifth year thereafter.
- [(v)] (E) For retaining walls located within the Borough of Brooklyn, an acceptable report must be filed within the [filing] one-year window starting January 1, [2018] 2028 and ending December 31, [2018] 2028, and every fifth year thereafter.

Exception: Beginning on January 1, 2029, owners whose retaining walls have their most recent status as “No Report Filed” may file a report prior to the start of their designated filing window provided that all applicable civil penalties set out in subdivision (d) of this section are paid at the time of filing. No additional filing is required in the designated filing window.

(vi) Initial compliance reports for new retaining walls that are subject to this rule shall be filed as follows:

(A) The report must be filed five years from the date of first work permit issued for the construction of retaining wall, if that five-year date falls within the applicable filing window according to the location of the wall.

(B) If five years from the date of first work permit issued falls outside the applicable filing window according to the location of the wall, then the initial report must be filed within the applicable one-year filing window for the next five-year cycle.

[(6)] (vii) A report must be filed within sixty (60) days of the date on which the [qualified retaining wall inspector] QRWI completed the [condition assessment, but not more than one (1) year after completion of the close-up inspection.] critical examination, as defined in subparagraph (ix) of paragraph (2) of subdivision (c) of this section. If such report is not filed within such sixty (60) days, a new critical examination is required.

(viii) A report may not be filed more than one (1) year after completion of the critical examination.

(ix) If the report is not acceptable and is rejected by the Department, a revised report must be filed within forty-five (45) days of the date of the Department's rejection, after which the original file date will no longer be valid. If the report is not acceptable after two (2) rejections, a new initial filing fee must be paid, as specified in the rules of the Department.

(x) Failure to submit a revised report addressing the Department’s objections within one (1) year of the initial filing requires a new [conditional assessment] critical examination, including a new close-up [assessment] inspection.

[(7)] (xi) A subsequent report may be filed within a five-year report filing cycle to change a retaining wall’s status or the completion date for repairs of SREM or unsafe conditions for that cycle.

[(f)] (5) Unsafe conditions.

[(1) If any retaining wall is found in an unsafe condition, the qualified retaining wall inspector or the person in charge of the retaining wall must notify the Department by calling 311 and then calling the Department directly with the 311 complaint number within 24 hours of discovering the unsafe condition.]

[(2) (i) Upon discovery of an unsafe condition, the owner of the retaining wall, his or her agent, or the person in charge of the retaining wall must immediately commence such repairs or reinforcements and any other appropriate measures, such as cordoning off areas that may be dangerous, and erecting fences, sidewalk sheds and safety netting as may be required to secure the safety of the public and to make the retaining [wall safe] wall's structure and appurtenances conform to the provisions of the Administrative Code.

(ii) All unsafe conditions must be corrected within 90 days from the submission of the critical examination report.

(iii) If, due to the scope of the repairs, the unsafe conditions cannot be corrected within the required 90 days, the QRWI must recommend a timeframe for repairs as noted in item (M) of subparagraph (iii) of paragraph (3) of subdivision (c). The owner of the retaining wall is responsible for ensuring that the conditions described in the compliance report as unsafe are corrected and all actions recommended by the QRWI are completed within this timeframe. The owner must notify the Department of any deviation from the timeframe to make corrections as specified in the QRWI's report. The subsequent report must include supporting documents from the QRWI justifying the request for a new time frame.

[(3) (iv) Within two weeks after repairs to correct the unsafe condition have been completed, the [qualified retaining wall inspector] QRWI must inspect the premises. [The qualified retaining wall inspector must obtain permit sign-offs as appropriate and] The QRWI must promptly file with the Department a detailed amended report stating the revised report status of the retaining wall, along with a filing fee as specified in the rules of the Department, and the owner must obtain permit sign-offs as appropriate.

(v) If the report is not acceptable and is rejected by the Department, a revised report must be filed within forty-five (45) days of the date of the Department's rejection.

(vi) If the report is not acceptable after two (2) rejections, a new amended filing fee as specified in the rules of the Department is required.

(vii) Protective measures must remain in place until an amended report is accepted; however, the [qualified retaining wall inspector] QRWI may request permission for the removal of the protective measures upon submission of a signed and sealed statement certifying that an assessment

was conducted, the conditions were corrected, and the protective measures are no longer required. Permission may be granted at the Commissioner's sole discretion.

[(4)] (viii) The Commissioner may grant an extension of [time of] up to ninety (90) days to complete the repairs required to [remove] correct an unsafe condition upon receipt and review of an [initial] extension application submitted by the [qualified retaining wall inspector] QRWI on behalf of the owner, together with:

[(i)] (A) A copy of the original report for that report filing cycle and all required documentation submitted with such report;]

[(ii)] (A) Notice that the [retaining wall and surrounding area] premises have been secured for public safety by means of a [shed, bracing,] fence or other appropriate measures as may be required;

[(iii)] (B) A copy of the contract indicating scope of work to correct unsafe conditions;

[(iv)] (C) The [qualified retaining wall inspector's] QRWI's estimate of length of time required for repairs;

[(v)] (D) A statement of all applicable permit requirements;

[(vi)] A notarized affidavit by the owner of the retaining wall that work will be completed within the time of the qualified retaining wall inspector's stated estimate; and]

[(vii) a] (E) A fee as specified in the rules of the Department[.];

[Financial considerations will not be accepted as a reason for granting an extension.

(5) A further extension will be considered only upon receipt and review of a further extension application, together with notice of:]

[(i)] (F) An unforeseen delay or circumstance (e.g., weather, labor strike, fire) affecting the substantially completed work; [or] and

[(ii)] Unforeseen circumstances; or

[(iii)] The nature of the hazard that requires more than ninety (90) days to remedy (e.g., new retaining wall to be built).]

(G) Progress photos showing current repairs.

Financial considerations will not be accepted as a reason for granting an extension.

[(6) Notwithstanding any extensions granted to commence the repair of an unsafe condition, all work to repair an unsafe condition must be completed within 365 days of filing a report of an unsafe condition with the Department.]

[(g) (6) Conditions classified as [safe with repair and/or engineering monitoring] SREM.

[(1) (i) The owner of the retaining wall is responsible for ensuring that the conditions described in the report of [condition assessment] critical examination as safe with repair and/or engineering monitoring are [repaired, the wall is restored to a safe condition,] corrected and all actions recommended by the [qualified retaining wall inspector] QRWI are completed within the time frame recommended by the [qualified retaining wall inspector,] QRWI and are not left to deteriorate into unsafe conditions [before the next condition assessment]. It is the owner's responsibility to notify the Department of any deviation from the timeframe to make corrections as specified in [qualified retaining wall inspector's] the QRWI's report. [Such notification] The subsequent report must [be accompanied by] include supporting documents from the [qualified retaining wall inspector] QRWI justifying the request for a new time frame. [The Department may approve or disapprove such request.]

[(2) (ii) A report may not be filed describing the same condition and pertaining to the same location on the retaining wall as [safe with repair and/or engineering monitoring] SREM for two consecutive report filing cycles.

[(3) (iii) The [qualified retaining wall inspector] QRWI must certify the correction of each condition reported as requiring repair in the previous report filing cycle, [or] report conditions that were reported as [safe with repair and/or engineering monitoring] SREM in the previous report filing cycle as unsafe if not corrected at the time of the current [assessment] critical examination, or report corrections that were made in the previous cycle as unsafe if they need further or repeated repair at the time of the current cycle.

[(h) (d) Civil Penalties.

(1) Failure to file. An owner who fails to file the required acceptable [condition assessment] initial compliance report will be liable for a civil penalty of [one] five thousand dollars (\$[1,000]5,000) per year immediately after the end of the applicable filing window.

- (2) Late filing. In addition to the penalty for failure to file, an owner who submits a late filing will be liable for a civil penalty of [two hundred fifty] one thousand dollars (\$[250.00]1,000) per month, commencing on the day following the filing deadline of the assigned filing window period and ending on the filing date of an acceptable initial report.
- (3) Failure to correct unsafe conditions. [In addition to the penalties provided in this section, an] An owner who fails to correct an unsafe condition will be liable for a civil penalty of one thousand dollars (\$1,000) per month, pro-rated daily, until the unsafe condition is corrected, unless the commissioner grants an extension of time to complete repairs pursuant to this section. This penalty will be imposed until the Department receives an acceptable amended report indicating the unsafe conditions were corrected[,] or [until] an extension of time is granted.
- (4) Failure to correct SREM conditions. An owner who fails to correct a SREM condition reported as requiring repair in the previous report filing cycle and subsequently files the condition as unsafe shall be liable for a one-time civil penalty of two thousand dollars (\$2,000).

[(i)] (5) Challenge of civil penalty.

[(1)] (i) An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision by providing proof of compliance. Examples of such proof must include, but are not limited to, a copy of an acceptable initial report, a copy of the acceptable amended report, copies of approved extension of time requests while work was/is in progress, or written proof from a [qualified retaining wall inspector] QRWI that the unsafe conditions observed at the retaining wall were corrected and the violation was dismissed.

[(2)] (ii) Challenges must be made in writing within thirty (30) days from the date of service of the violation by the Department and must be sent to the office/unit of the Department that issued the violation. The decision to dismiss or uphold the penalty is at the sole discretion of the Department.

[(j) Penalty] (e) **Full or partial penalty waivers; eligibility and evidentiary requirements.**

Owners may request a waiver of penalties assessed for violation of Article 305 of Title 28 of the Administrative Code, or rules enforced by the Department. Requests must be made in writing and must meet eligibility and evidentiary requirements as follows:

(1) Owner status.

(i) A new owner requesting a waiver due to change in ownership who receives a notice of violation that was issued to the property after the transfer of ownership must submit proof of a recorded deed showing evidence of transfer of ownership to the current owner after penalties were incurred, as

well as any other documentation requested by the Department. [The new owner may only request a waiver in 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 took title of the property as part of an economic development program sponsored by a government agency.]

The waiver period shall be from the date of the deed to the date of the violation issuance.

- (ii) A new owner of a government-owned property requesting a waiver due to change in ownership must submit official documentation from the government entity affirming that the premises was entirely owned by the government entity during the period for which a waiver is requested.
 - (iii) An owner may be granted a waiver of penalties upon submission of a copy of an order signed by 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.”] judge.
 - (iv) An owner may be granted a waiver of penalties if a state of emergency is declared that prevents an owner from conducting an inspection, filing a report, or correcting unsafe conditions.
- (2) Retaining wall status. An owner requesting a waiver because the wall was removed must submit city or Departmental records showing evidence of the removal of the retaining wall prior to the filing deadline.
- [(k) Alternate report filing requirements for owners of more than 200 retaining walls in multiple boroughs. Notwithstanding any other provisions of this section, the inspection and reporting requirements set forth above for retaining walls shall not apply to owners of 200 or more retaining walls in multiple boroughs with a height of ten feet or more and fronting on a public right-of-way who on the effective date of this rule (i) employ full-time professional engineers and (ii) have an established inspection procedure for such retaining walls acceptable to the Department. Such inspection procedure must comply with Article 305 of Title 28 of the Administrative Code. Such owners must file inspection reports for all such retaining walls in a form acceptable to the Department.]

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

RULE TITLE: Amendment of Rules Relating to Retaining Walls

REFERENCE NUMBER: 2024 RG 044

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
Senior Counsel

Date: December 19, 2024

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

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

RULE TITLE: Amendment of Rules Relating to Retaining Walls

REFERENCE NUMBER: DOB-179

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 a cure period is not practicable under the circumstances.

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

May 13, 2024
Date