

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 regarding the penalty for failure to certify correction of certain immediately hazardous violations.

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 10/7/24.

- 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/02a81dde-383a-48c3-a495-9a05cbb249cf@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/02a81dde-383a-48c3-a495-9a05cbb249cf@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: 224 959 241 737

Passcode: HkgkLP (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: 769 318 072#

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.
- **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 by 9/30/24 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.

Is there a deadline to submit comments? Yes, you must submit comments by 10/7/24.

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. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by 9/23/24.

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 section 28-219.1 of the New York City Administrative Code authorize DOB to make this proposed rule. This proposed rule was not included in DOB's regulatory agenda for this Fiscal Year because it was not contemplated when DOB published the agenda.

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

Local Law 50 of 2022 amended section 28-219.1 of the New York City Administrative Code to remove the minimum penalty for failure to certify correction of an immediately hazardous condition and to exempt 1-4 family homes. The local law also limited the violations eligible for the penalty to those issued for an immediately hazardous condition at construction sites.

Section 102-05 is being amended to conform to the provisions of Local Law 50/22.

In addition, Local Law 126 of 2021 added a requirement to section 28-219.1 that the civil penalty be paid before a certificate of correction can be accepted for the violation that led to the civil penalty. Similar language is being added to the rule to conform it to this provision.

The rule codifies the process by which the department imposes such penalties and the manner in which such penalties may be challenged.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and section 28-219.1 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

Section 102-05 of Title 1 of the Rules of the City of New York is amended to read as follows:

§102-05 [Penalties] Penalty for failure to certify correction of certain immediately hazardous violations.

(a) Penalty [amounts] amount. Pursuant to §28-219.1 of the Administrative Code, and in addition to any penalties otherwise authorized by article 202 of chapter 2 of title 28 of the Administrative Code and the rules of the department, whenever any person fails to submit certification of correction of an immediately hazardous violation that was issued at a construction site and poses a threat of imminent danger to public safety or property, a penalty of \$5,000 shall be paid to the department [as follows:].

[(1) For one-family or two-family dwellings, the penalty shall be \$1,500.

(2) For a building other than a one-family or two-family dwelling, the penalty shall be not less than \$3,000 nor more than \$5,000.]

Exception: This penalty does not apply to one- to four-family dwellings.

(b) Issuance of permits or certificates of occupancy; rescission of stop work order; approval of Certificates of Correction. No permit or certificate of occupancy shall be issued [and], no stop work order may be rescinded, nor shall any Certificate of Correction for the immediately hazardous violation giving rise to the civil penalty be approved at the property until such penalty is paid to the department. Failure to pay such penalty shall not prevent the issuance of a permit for work to be performed pursuant to articles 215 or 216 of chapter 2 of title 28 of the Administrative Code.

(c) Process.

(1) Where the department determines that a Certificate of Correction of the underlying immediately hazardous violation that is returnable to the Environmental Control Board/Office of Administrative Trials and Hearings (ECB/OATH) has not been submitted as provided in §28-219.1 of the Administrative Code, the department will send a notice of the civil penalty pursuant to this section to the owner of the property at which the immediately hazardous violation occurred and, if the owner is not the respondent named in the notice of violation for the underlying immediately hazardous violation, to such respondent. The notice will indicate the manner in which a challenge to the penalty may be made in accordance with this subdivision and that the penalty will be imposed unless the department receives such a challenge within 30 days after the date of such notice. The notice will include the bases on which such a challenge may be made. The department will send the notice by regular mail.

(2) A challenge to the penalty may be made by the owner and/or the respondent named in the ECB/OATH notice of violation for the immediately hazardous violation. Such challenge must be made in a form and manner as set forth on the web site of the department.

(3) The basis for such a challenge must be one of the following:

(i) the immediately hazardous ECB/OATH violation was dismissed,

(ii) the immediately hazardous ECB/OATH violation was downgraded to a major or lesser violation,

(iii) an acceptable Certificate of Correction for the immediately hazardous violation was submitted to the department within 30 days after the date of the notice sent pursuant to paragraph (1) of this subdivision; or

(iv) the immediately hazardous violation was issued on or after May 15, 2022 at a construction site for a one- to four-family dwelling.

(4) The department will review any documents or evidence submitted by the person challenging the penalty and will mail or email notice of its determination to such person. If the challenge is denied, the penalty amount will be imposed 10 days after the date of such notice. The determination shall be the final determination of the department for purposes of review pursuant to article 78 of the civil practice law and rules.

**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: Penalty for failure to certify correction of immediately hazardous violations

REFERENCE NUMBER: DOB-173

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 the violation cannot be corrected or undone.

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

August 19, 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: Penalty for failure to certify correction of immediately hazardous violations

REFERENCE NUMBER: 2023 RG 090

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: August 16, 2024