

## **New York City Department of Transportation**

### **Notice of Adoption**

**NOTICE OF ADOPTION** relating to the update of the New York City Department of Transportation's (DOT) "Highway Rules" and "Penalty Schedule" contained in Chapters 2 and 3 of Title 34 of the Rules of the City of New York.

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN** the Commissioner of the New York City Department of Transportation (DOT) by Sections 1043 and 2903(b) of the New York City Charter and in accordance with the requirements of Section 1043 of the New York City Charter that DOT hereby amends Sections 2-02, 2-09, 2-11, 2-14, and 2-20 of Chapter 2 of Title 34 of the Rules of the City of New York and Section 3-01 of Chapter 3 of Title 34 of the Rules of the City of New York.

This rule was first published in the City Record on May 27, 2022 and a public hearing was held on June 29, 2022. DOT received no verbal or written comments from the public.

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

The Commissioner of the New York City Department of Transportation is authorized to issue rules regarding highway operations in the City pursuant to Sections 1043 and 2903(b) of the New York City Charter.

The purpose of the adopted rule is to update various sections of the Highway Rules to clarify existing requirements and to establish various new inspection requirements. Additionally, pursuant to Local Law 5 of 2018, the maximum civil penalty amounts relating to street construction, maintenance, repairs, obstructions and closures were increased significantly, particularly where public safety is involved. Accordingly, DOT amended the Penalty Schedule to increase certain penalty amounts and establish new penalty amounts for violations adjudicated at the Office of Administrative Trials and Hearings. The increased and newly established penalties are expected to increase compliance with DOT's rules and thereby promote public safety in the street construction and maintenance process.

Specifically, the amendments to Chapter 2 of Title 34 of the Rules of the City of New York are as follows:

- Section 2-02(a) is amended by clarifying that public utility companies and franchisees must obtain permits using their own corporate names instead of their sub-contractors' names.
- Section 2-02(c)(2)(i) is amended by clarifying that signage is required at a single excavation and not only at series of excavations
- Section 2-02(c) is amended by adding a new paragraph (4), requiring that permittees add their identification numbers to any temporary construction, parking, raised plow or other

regulatory signs.

- Section 2-02(d) is amended to require entities to obtain permits as noted on corrective action requests (“CAR”), to respond to a CAR in a timely manner in order to avoid receiving a summons for failure to protest, and to remove language that a new permit is not required if restoration work does not entail an additional excavation or re-grading of hardware.
- Section 2-02(g) is amended to require underground facility owners to be responsible for any surface defects caused by their facility underneath the roadway.
- Section 2-09(f)(4) is amended by adding a requirement for removing all wood forms and/or tree guards prior to the expiration of the permit.
- Section 2-11(e)(10)(i) is amended by allowing composite plates to be used to cover open restorations or excavations.
- Section 2-14(f)(6) is amended by adding the requirement that protection placed beneath the wheels of a refuse container must remain in place for the entire time such container is placed on the roadway in order to protect the street from damage.
- Section 2-14(f)(8) is amended to require bike lanes to be kept clean and unobstructed of debris and garbage.
- Section 2-20(b)(7) is amended by clarifying that all barricades must bear a sign in accordance with section 2-02(c)(2).
- Section 2-20(j)(4) is amended to clarify that non-City electrical and/or non-electrical equipment located on or extending over a City street must be made safe within the time frame prescribed by DOT.

The amendment to Chapter 3 of Title 34 of the Rules of the City of New York is as follows:

- Section 3-01 is amended to increase penalty amounts for certain violations and establish penalty amounts for new violations.

DOT received no verbal or written comments to the proposed rule, thereby no changes were made to the proposed rule after the public hearing.

New material is underlined.

[Deleted material is in brackets.]

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

**Section 1. Subdivision (a) of section 2-02 of Title 34 of the Rules of the City of New York is amended to read as follows:**

- (a) Initial permit application. Public utilities or franchisees must apply for permits under their

corporate name and not their sub-contractors' name. The following information shall be provided to the Department upon initial application for a permit under these rules and shall be updated as necessary and refiled annually:

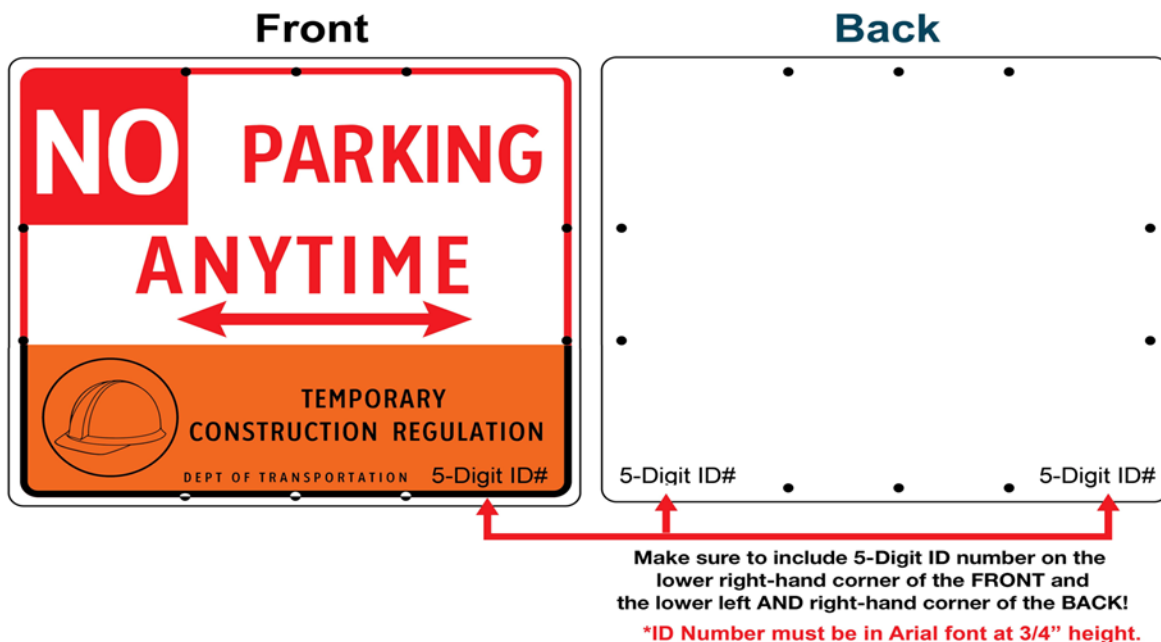
**§2. The introductory language and subparagraph (i) of paragraph 2 of subdivision (c) of section 2-02 of Title 34 of the Rules of the City of New York is amended to read as follows:**

- (2) Signage along a single street excavation, a series of excavations or [street openings] trenches.
  - (i) Permittees must post signs at any single street excavation or trench and/or at every 25-foot interval for a series of street excavations or trenches [100 foot intervals along a series of excavations or continuous cut], indicating the following:

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**§3. Subdivision (c) of section 2-02 of Title 34 of the Rules of the City of New York is amended by adding a new paragraph (4), to read as follows:**

(4) Permittees' identification numbers on temporary signs. Permittees must affix their Department issued five-digit identification number using a waterproof label or sticker on all temporary signs, including but not limited to temporary construction, raised plow, parking or regulatory signs. The lettering must be in Arial font black ink, 3/4 inch in height and width, placed at the lower right-hand corner of the front and the lower left and right-hand corner of the back of the sign as shown below. The labels/stickers must be visible/legible at all times. Permittees must replace any worn out or faded labels/stickers.



**§4. Paragraphs 1, 2, 3 and 6 of subdivision (d) of section 2-02 of Title 34 of the Rules of the City of New York are amended to read as follows:**

- (1) A CAR may be served [either personally,] by mail and/or by e-mail on the person responsible for

the work and/or the condition which requires correction at his or her last known address, e-mail address or at the address or e-mail address for such person contained in the records of the Department. Where a CAR is served for a violation of § 19-147 of the Administrative Code, in the case of a utility company, the CAR may be given orally or in writing to a person or at a place designated by the utility and the utility shall respond within twenty-four (24) hours.

(2) Any corrective action required by the CAR shall be performed within thirty (30) days of the issuance of the CAR unless such issuance is protested as provided herein. Entities must obtain the required permit as noted on the CAR prior to performing the corrective action. Failure to obtain such a permit may result in a violation and the CAR will remain open until all conditions are satisfied.

(3) Within fourteen (14) days after the date of mailing of the CAR[, unless a different time is specified on the CAR or in these rules], the respondent may protest the issuance of the CAR in the manner directed on the CAR. If the respondent fails to timely protest the CAR and the Department issues a summons for an uncorrected condition, the respondent may be issued a summons for failing to respond to the CAR in a timely manner. If a protest is timely submitted and granted by the Department, the CAR fee will be waived.

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(6) In the event that the original permit has expired before the corrective action is undertaken [and an additional excavation is necessary], a new permit, as noted on the CAR, shall be obtained in order to complete the required work. The new permit shall not affect the guarantee period, which will relate back to the original permit.[ If a permittee is performing restoration work that does not entail an additional excavation or re-grading of hardware, a new permit shall not be required by the Department.]

**§5. Subdivision (g) of section 2-02 of Title 34 of the Rules of the City of New York is amended by adding a new Paragraph 4, to read as follows:**

(4) Underground facility owners will be responsible for any surface defects caused by their facility underneath the roadway.

**§6. Item (A) of subparagraph (xx) of paragraph 4 of subdivision (f) of section 2-09 of Title 34 of the Rules of the City of New York is amended to read as follows:**

(A) No trees shall be planted in the sidewalk area unless a Street Opening Permit is issued by the Department. No such permit shall be issued by the Department unless the prior written consent of the Department of Parks and Recreation authorizing the tree planting is furnished. Tree pits shall be constructed in accordance with the specifications. All wood forms and/or construction-related tree guards must be removed prior to the expiration of the permit.

**§7. Paragraph 4 of subdivision (f) of section 2-09 of Title 34 of the Rules of the City of New York is amended by adding a new subparagraph (xxi), to read as follows:**

(xxi) All wood forms must be removed prior to the expiration of the permit.

**§8. Subparagraph (i) of paragraph 10 of subdivision (e) of section 2-11 of Title 34 of the Rules of the City of New York is amended to read as follows:**

(i) All plating and decking installed by the permittee shall be made safe for vehicles and/or pedestrians and shall be adequate to carry the load. Composite plates may be used provided that they comply with the AASHTO H25 or HS25 specifications.

**§9. Paragraphs 6 and 8 of subdivision (f) of section 2-14 of Title 34 of the Rules of the City of New York are amended to read as follows:**

(6) The street shall be protected with proper covering (e.g., planking, skids, plating, or pneumatic tires) to prevent damage before containers are placed on the street. Protection shall be placed directly under each steel wheel or roller of the container to adequately distribute the weight. Protection must remain in place for the entire time the container remains on the roadway. Placement of all protection shall be done upon delivery by the owner of the container. All planking and skids for containers shall be a minimum of 1½" to a maximum of 3" thick. Overall size of the protective covering shall be a minimum of 12" x 12" and the placement of the protective covering shall not exceed the outer dimensions of the container.

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(8) Sidewalks, gutters, crosswalks, bike lanes and driveways shall at all times be kept clear and unobstructed and all dirt, debris and rubbish shall be promptly removed therefrom.

**§10. Paragraph 7 of subdivision (b) of section 2-20 of Title 34 of the Rules of the City of New York is amended to read as follows:**

(7) The roadway surrounding a street shunt shall be properly barricaded as a warning to vehicular traffic in the event that it is not feasible to install shunt boards (ramps) capable of withstanding constant, heavy vehicular traffic. All barricades must bear a sign pursuant to 34 RCNY § 2-02(c)(2) of these rules displaying the contractor's name and telephone number and the start and end dates of all work. The sidewalk areas over which the shunt runs and all wires shall be protected and ramped with a reflective covering.

**§11. Paragraph 4 of Subdivision (j) of section 2-20 of Title 34 of the Rules of the City of New York is amended to read as follows:**

(4) When the owner of any non-city electrical and/or non-electrical equipment located on or extending over a City street, or attached to City property is notified by the Department that a repair or alteration of said equipment is needed for public safety purposes, the equipment shall be made safe within the time frame prescribed by the Department. However, in cases of emergency the equipment must be made safe within [but in no event more than] twenty-four (24) hours of notification. Complete repair or alteration shall be made within seven (7) days following notification as directed by the Department.

**§12. Section 3-01 of Title 34 of the Rules of the City of New York is amended to read as follows:**

**§ 3-01 Department of Transportation Penalty Schedule.**

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<u>Section</u>	<u>Description</u>	<u>Penalty (\$)</u>	<u>Default (\$)</u>
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<u>34RCNY 2-02(a)</u>	<u>Failure to apply for a permit under a public utility's or franchisee's corporate name</u>	<u>1500</u>	<u>4500</u>
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<u>34RCNY 2-02 (c)(2)</u>	<u>Failure to display required signs at work site</u>	<u>[250]</u> <u>750</u>	<u>[350]</u> <u>2250</u>
<u>34RCNY 2-02 (c)(4)</u>	<u>Failure to have the necessary ID markings on DOT required signs</u>	<u>750</u>	<u>2250</u>
<u>34RCNY 2-02 (d)(2)</u>	<u>Failure to obtain proper permits to repair the conditions reported on a CAR.</u>	<u>500</u>	<u>1500</u>
<u>34RCNY 2-02 (d)(3)</u>	<u>Failure to timely protest a CAR</u>	<u>250</u>	<u>750</u>
<u>34RCNY 2-02 (g)(4)</u>	<u>Failure to repair defects caused by respondent's underground structure</u>	<u>1200</u>	<u>3600</u>
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<u>34RCNY 2-09 (f)(4)(xx)</u>	<u>Failure to remove wood forms and/or tree guards upon expiration of the permit</u>	<u>250</u>	<u>750</u>
<u>34RCNY 2-09 (f)(4)(xxi)</u>	<u>Failure to remove wood forms upon expiration of the permit</u>	<u>250</u>	<u>750</u>
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<u>34RCNY 2-11 (e)(10)(i)</u>	<u>Failure to use composite plates that comply with AASHTO H25 or HS25 specifications</u>	<u>1200</u>	<u>3600</u>
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<u>34 RCNY 2-11 (e)(11)(v)</u>	<u>Failure to restore concrete base at same grade as existing base</u>	<u>[400]</u> <u>1,200</u>	<u>[1,000]</u> <u>3,600</u>
<u>34 RCNY 2-11 (e)(11)(vi)</u>	<u>Installing asphalt other than binder as a base course</u>	<u>[400]</u> <u>1,200</u>	<u>[1,000]</u> <u>3,600</u>
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<u>34RCNY 2-14 (f)(6)</u>	<u>Failure to have the proper street protections under commercial refuse container at all times</u>	<u>250</u>	<u>750</u>
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<u>34RCNY 2-14 (f)(8)</u>	<u>Commercial refuse container/debris obstructing sidewalks, gutters, crosswalks, bike lanes or driveways.</u>	<u>250</u>	<u>750</u>

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34 RCNY 2-20 (b)(4)	Failure to replace shunt with permanent connection within 90 days	<del>[250]</del> <u>750</u>	<del>[500]</del> <u>2,250</u>
<u>34RCNY 2-20</u> <u>(b)(7)</u>	<u>Failure to bear a sign pursuant to 34 RCNY 2-02(c)(2)</u> <u>with contractor's name, telephone numbers, start and</u> <u>end dates of all work</u>	<u>750</u>	<u>2250</u>
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<u>34RCNY 2-20</u> <u>(j)(4)</u>	<u>Failure to repair non-city electrical and/or non-</u> <u>electrical equipment within the required time frame</u>	<u>750</u>	<u>2250</u>