

# CHAPTER 1

## ADMINISTRATION

### ARTICLE 101 GENERAL

**§28-101.1 Title.** The provisions of this chapter shall apply to the administration of the codes set forth in this title and the 1968 building code. This title shall be known and may be cited as the “New York city construction codes” and includes:

- The New York city plumbing code.
- The New York city building code.
- The New York city mechanical code.
- The New York city fuel gas code.
- The New York city energy conservation code.

**§28-101.2 Intent.** The purpose of the New York city construction codes is to provide reasonable minimum requirements and standards, based upon current scientific and engineering knowledge, experience and techniques, and the utilization of modern machinery, equipment, materials, and forms and methods of construction, for the regulation of building construction in the city of New York in the interest of public safety, health, welfare and the environment, and with due regard for building construction and maintenance costs.

**§28-101.3 Codes.** Any reference in this title to “this code” or “the code” shall be deemed to be a reference to this title and all of the codes comprising the New York city construction codes unless the context or subject matter requires otherwise. Whenever a section or subsection of this code is cited or referred to, subordinate consecutively numbered sections and subsections of the cited provision are deemed to be included in such reference unless the context or subject matter requires otherwise.

**§28-101.3.1 Occupancy classifications in prior codes.** With regard to prior code buildings, references to occupancy classifications in this code shall be deemed to refer to the equivalent occupancy classification under the 1968 or prior building codes.

**§28-101.4 Effective date.** Except as otherwise provided in sections 28-101.4.1, 28-101.4.2, 28-101.4.3 and 28-101.4.4 on and after July 1, 2008, all work shall be performed in accordance with the provisions of this code.

**§28-101.4.1 Permit issued or work commenced prior to July 1, 2008.** If a permit for work was issued prior to July 1, 2008 or, if no permit was necessary, work was commenced prior to July 1, 2008, all of the provisions of chapter 1 of title 27 of the administrative code as heretofore in effect shall apply to such work.

**§28-101.4.2 Applications for construction document approval submitted prior to and within twelve months after July 1, 2008.** Any work for which an application for construction document approval was submitted to the department prior to July 1, 2008 and not thereafter abandoned, or for which an application for construction document approval is submitted to the department within a period of twelve months after such date may, at the option of the owner, be performed in its entirety in accordance with the provisions of this code, or in accordance with the 1968 building code, provided that such work is commenced within twelve months after the date of issuance of a permit therefore and is diligently carried on to completion. The commissioner may, for good cause, extend the time period for commencement of the work beyond 12 months. Where the owner elects to perform the work in compliance with the 1968 building code, the following conditions shall apply:

1. Except as otherwise limited by the commissioner, administration and enforcement of the 1968 building code shall be in accordance with this code, including but not limited to approval of construction documents, issuance of permits and certificates of occupancy, tests and inspections, penalties and enforcement. Controlled inspections and semi-controlled inspections as referenced in the 1968 building code shall be deemed to be special inspections and shall comply with the provisions of this code relating to special inspections. Materials regulated in their use by the 1968 building code shall be subject to applicable provisions of this code.
2. Safety of public and property during construction operations including demolition shall be governed by chapter 33 of the New York city building code.

**§28-101.4.3 Optional use of the 1968 building code for work on prior code buildings.** At the option of the owner, and subject to applicable provisions of this code, work on prior code buildings may be performed in accordance with the requirements and standards set forth in the 1968 building code, or where the 1968 code so authorizes, the code in effect prior to December 6, 1968.

## **Exceptions:**

1. **Fuel gas, plumbing and mechanical work.** The installation of and work on all appliances, equipment and systems regulated by the New York city fuel gas code, the New York city plumbing code and the New York city mechanical code shall be governed by applicable provisions of those codes relating to new and existing installations.
2. **Fire protection systems.** Alterations of buildings and changes of use or occupancy shall be governed by chapter 9 of the New York city building code, subject to special provisions for prior code buildings as set forth therein.
3. **Elevators, conveyors and amusement rides.** The installation of and work on elevators, conveyors, and amusement rides shall be governed by chapter 30 and appendix K of the New York city building code and the rules of the department, subject to special provisions for prior code buildings as set forth therein.
4. **Safety during construction operations.** Safety of public and property during construction operations including demolition shall be governed by chapter 33 of the New York city building code.
5. **Accessibility.** Alterations, including minor alterations, of buildings and changes of use or occupancy, shall be governed by chapter 11 of the New York city building code, subject to special provisions for prior code buildings as set forth therein.
6. **Encroachments into the public right of way.** Encroachments onto the public right of way shall be governed by chapter 32 of the New York city building code.
7. **Administration and enforcement.** Except as otherwise limited by the commissioner, administration and enforcement of the 1968 building code shall be in accordance with this code, including but not limited to approval of construction documents, issuance of permits and certificates of occupancy, tests and inspections, penalties and enforcement.
8. **Special inspections.** Controlled inspections and semi-controlled inspections as referenced in the 1968 building code shall be deemed to be special inspections and shall be governed by the provisions of this code relating to special inspections.
9. **Materials.** Materials regulated in their use by the 1968 building code shall be subject to applicable provisions of this code.
10. **Security grilles.** The installation and replacement of security grilles shall comply with section 1008.1.4.5 of the New York city building code.
11. **Energy efficiency.** All work related to energy efficiency shall be regulated by the New York city energy conservation code.
12. **Roof recovering and replacements.**
  - 12.1. **Installation and materials.** Work involving the recovering or replacing of an existing roof covering shall be governed by sections 1510.1 through 1510.6 of the New York city building code;
  - 12.2. **Cool roofs.** Work involving the recovering or replacing of an existing roof covering shall comply with section 1504.9 of the New York city building code unless the area to be recovered or replaced is less than fifty percent of the roof area and less than 500 square feet (46 m<sup>2</sup>).
  - 12.3. **Green roofs.** Notwithstanding the applicant's election to use the 1968 building code or prior code, work involving green roof systems and container gardens shall be permitted to be performed pursuant to Chapter 15 of the New York city building code.
13. **Handrails.** Where the alteration of a building includes the addition or replacement of an entire stair enclosure including the stairs, handrails shall comply with section 1009.12 and section 1012 of the New York city building code. Where the alteration of a building includes the addition or replacement of ramps, handrails shall comply with section 1010.8 and section 1012 of such code.
14. **Guards.** Where the alteration or repair of a building involves the addition or replacement of guards, such guards shall comply with sections 1013 and 1607.7 of the New York city building code.
15. **Areas of special flood hazard.** Within areas of special flood hazard in accordance with section 28-104.9.4, all work for any activity regulated by Appendix G of the New York city building code shall be governed by such appendix.
16. **Structural.** The use of load resistance factor design (LRFD), calculation of live loads, and applicability of seismic and wind loads shall be governed by special provisions for prior code buildings as set forth in section 1601.2 of the New York city building code.
17. **Emergency and standby power systems.** The installation of and work on emergency and standby power systems shall comply with section 2702.1 of the New York city building code.

18. **Parking garages and open parking lots.** Where an alteration of a parking garage or an open parking lot includes an increase in the size of the electric service, such alteration shall include provisions for the installation of electric vehicle charging stations in accordance with section 406.2.11 or 406.7.11 of the New York city building code, as applicable.

19. **Mold protection.** Alterations shall comply with sections 2506 and 2509 of the New York city building code relating to areas subject to moisture or water damage.

**§28-101.4.4 Reductions of fire safety or structural safety of prior code buildings prohibited.** Notwithstanding any other provision of this code, where the alteration of any prior code building or structure in accordance with a provision of this code would result in a reduction of the fire safety or structural safety of such building, relevant provisions of the 1968 building code shall apply to such alteration unless there is full compliance with those provisions of this code that would mitigate or offset such reduction of fire protection or structural safety. Where the owner, having a choice to elect the 1968 building code or this code, chooses this code, the applicant shall submit a comparative analysis acceptable to the commissioner of the relevant fire safety and structural safety provisions under the 1968 building code and this code, demonstrating that the alteration does not result in a reduction to the fire and life safety of the building.

**Exception:** The use of automatic-closing by smoke detection for doors serving vertical exit enclosures in accordance with section 708.7 of the New York city building code in a prior code building shall not be deemed to result in a reduction of the fire safety or structural safety of such a building.

**§28-101.4.5 Work that increases existing floor surface area of a prior code building by more than 110 percent.** Notwithstanding sections 28-101.4.3 and 28-102.4.3 or any other provision of this code that would authorize alterations of prior code buildings in accordance with the 1968 building code or prior codes, where the proposed work at the completion of construction will increase the amount of floor surface area of a prior code building by more than 110 percent, over the amount of existing floor surface area, such entire building shall be made to comply with the provisions of this code as if it were a new building hereafter erected. See Section 28-105.2 for permits for such work.

**Exceptions:** When determining the amount of existing floor surface area for the purposes of section 28-101.4.5, the following shall be excluded from the measured square footage of floor surface area:

1. The square footage of floors removed during the course of the work when such floors are removed together with the supporting beams, joists, decking and slabs on grade.
2. The square footage of any floor that was installed together with the supporting beams, joists, decking and slabs on grade less than 12 months prior to submission of the application for construction document approval for the proposed work. For the purposes of this exception, floors installed pursuant to a work permit signed off less than 12 months before such submission shall not be counted as existing floor surface area.

**§28-101.4.5.1 Changes in scope of work.** In cases where changes in the scope of work during the course of construction would result in increasing the floor surface area at the completion of construction by more than 110 percent over the amount of existing floor surface area as determined pursuant to section 28-101.4.5, such entire building shall be made to comply with the provisions of this code as if hereafter erected and such work shall be refiled as a new building application in accordance with the provisions of section 28-105.2.

**Exception:** Work to the extent necessary to relieve an emergency condition may be performed prior to amending plans or obtaining a new permit pursuant to sections 28-105.4.1 and 28-105.12.2.

**§28-101.4.5.2 Definitions.** As used in Section 28-101.4.5, the following term shall have the following meaning unless the context or subject matter requires otherwise.

**FLOOR SURFACE AREA.** Floor surface area is the gross square foot area of all horizontal floor and roof surfaces, including roofs of bulkheads and superstructures, of a building or structure at any level, including cellar, attic and roof.

**§28-101.4.5.3 Effect on zoning resolution.** The provisions of section 28-101.4.5 shall not be construed to affect the status of any nonconforming use or non-complying bulk otherwise permitted to be retained pursuant to the New York city zoning resolution.

**§28-101.5 Definitions.** As used in this chapter and elsewhere in this title, the following terms shall have the following meanings unless the context or subject matter requires otherwise:

**1968 BUILDING CODE.** Chapter 1 of title 27 of the administrative code as hereafter in effect.

**1968 OR PRIOR CODE BUILDINGS OR STRUCTURES (PRIOR CODE BUILDINGS).** (i) A building or structure in existence prior to July 1, 2008 or one for which a lawful building permit was issued for the erection of such building or structure prior to July 1, 2008. (ii) A building or structure erected in accordance with the 1968 building code under a lawful building permit

issued for the erection of such building or structure on or after July 1, 2008 in accordance with section 28-101.4.2 of this code.

**ACCEPTANCE OR ACCEPTED.** In reference to construction documents, the endorsement by the department of construction documents with less than full examination by the department based on the professional certification of a registered design professional in accordance with a program established by the commissioner.

**ADDITION.** An alteration of a building in existence that increases its exterior dimensions including but not limited to an extension or increase in floor area or height (including an increase in height or area resulting from the construction of a rooftop structure or rooftop mechanical equipment) of the building.

**ADMINISTRATIVE CODE.** The administrative code of the city of New York.

**ALTERATION.** Any construction, addition, change of use or occupancy, or renovation to a building or structure in existence.

**APPROVAL OR APPROVED.** In reference to construction documents, the determination by the department after full examination that submitted construction documents comply with this code and other applicable laws and rules. In reference to materials, the determination by the commissioner that material is acceptable for its intended use.

**APPROVED AGENCY.** An established and recognized agency, or other qualified person, engaged in conducting tests or furnishing inspection services, when approved pursuant to department rules as qualified to perform or witness identified testing or inspection services.

**APPROVED FABRICATOR.** An established and qualified person, firm or corporation approved by the commissioner to custom manufacture or build products or assemblies regulated by this code, including the production of concrete.

**APPROVED INSPECTION AGENCY.** An approved agency that is approved by the department as qualified to perform one or more of the inspections required by this code.

**APPROVED TESTING AGENCY.** An approved agency that is approved by the department as qualified to test and evaluate the performance of one or more of the materials regulated in their use by this code. Such term shall include, when approved pursuant to department rules, a third party testing or certification agency, evaluation agency, testing laboratory, testing service, licensed concrete testing laboratory, or other entity concerned with product evaluation.

**ARCHITECT.** A person licensed and registered to practice the profession of architecture under the education law of the state of New York.

**BUILDING.** Any structure used or intended for supporting or sheltering any use or occupancy. The term shall be construed as if followed by the phrase "structure, premises, lot or part thereof" unless otherwise indicated by the text.

**CHARTER.** The New York city charter.

**CERTIFICATE OF COMPLIANCE.** A certificate stating that materials meet specified standards, that work was done in compliance with approved construction documents and other applicable provisions of law, or with respect to specified service equipment, a certificate issued by the department authorizing the operation of such equipment.

**CITY.** The city of New York.

**COMMISSIONER.** The commissioner of buildings of the city of New York, or his or her duly authorized representative.

**CONSTRUCTION DOCUMENTS.** Plans and specifications and other written, graphic and pictorial documents, prepared or assembled for describing the design, location, physical characteristics, and other elements of the project necessary for obtaining a building permit.

**DAY.** A calendar day, computed in accordance with section 20 of the New York state general construction law, unless otherwise specified as a business day.

**DEFERRED SUBMITTAL.** Those portions of the design that are not submitted at the time of the application for construction document approval and that are to be submitted to the department within a specified period of time after the issuance of a permit.

**DEMOLITION.** Full or partial demolition.

**DEMOLITION, FULL:** The dismantling, razing, or removal of all of a building or structure, including all operations incidental thereto.

**DEMOLITION, PARTIAL:** The dismantling, razing, or removal of structural members, floors, interior bearing walls, and/or exterior walls or portions thereof, including all operations incidental thereto.

**DEPARTMENT.** The department of buildings of the city of New York.

**ENGINEER.** A person licensed and registered to practice the profession of engineering under the education law of the state of New York.

**ENLARGEMENT.** An addition.

**EXISTING BUILDING OR STRUCTURE.** A completed building or structure that is in existence at the time of an applicable reference in this code.

**FABRICATED ITEM.** Products and assemblies regulated by this code, that are custom manufactured, or built prior to their incorporation into the work at the construction site. Fabricated items shall not include listed, labeled or approved products or assemblies. Materials produced in accordance with standard specifications referenced by this code, such as rolled structural steel shapes, steel-reinforcing bars, masonry units, and wood structural panels or in accordance with a referenced standard, listed in this code, which provides requirements for quality control done under the supervision of a third-party quality control agency shall not be considered fabricated items.

**FIRE PROTECTION PLAN.** A report containing a narrative description of the life and fire safety systems and evacuation system for a structure.

**HEREAFTER.** On or after July 1, 2008.

**HERETOFORE.** Before July 1, 2008.

**INSPECTION CERTIFICATE.** Identification applied to a product by an approved agency containing the name of the manufacturer, the function and performance characteristics, and the name and identification of the approved agency that indicates that the product or material has been inspected and evaluated by such approved agency. An inspection certificate shall also mean a certificate issued by the department upon satisfactory completion of an inspection or test.

**LABEL.** An identification applied to material by the manufacturer that contains the name of the manufacturer, the function and performance characteristics of the material, and the name and identification of the approved agency and that indicates that the representative sample of the material has been tested and evaluated by an approved agency.

**LABELED.** Material to which has been attached a label, symbol or other identifying mark of the manufacturer that contains the name of the manufacturer, the function and performance characteristics of the product or material, and the name and identification of an approved agency and that indicates that a representative sample of the material has been tested and evaluated by an approved agency for compliance with nationally recognized standards or tests to determine suitable usage in a specified manner.

**LAND SURVEYOR.** A person licensed and registered to practice the profession of land surveying under the education law of the state of New York.

**LANDSCAPE ARCHITECT.** A person licensed and registered to practice the profession of landscape architecture under the *Education Law of the State of New York*.

**LETTER OF COMPLETION.** A document issued by the department indicating that permitted work has been completed, including satisfactory final inspection in accordance with this code. A letter of completion is issued only in circumstances where a certificate of occupancy is not required upon completion of the permitted work.

**LIMITED OIL-BURNING BOILER ALTERATIONS.** An alteration to an oil burner/boiler system that is limited in scope, falling into one of the following categories:

**Category 1.** An alteration to an oil burner/boiler system where the total cost of the proposed category 1 work in the building does not exceed thirty-five thousand dollars in any 12-month period and where the proposed work is limited to the replacement of oil equipment or oil piping including oil tanks with 330 gallons (1250 L) or less capacity provided the replacement tanks have a UL listing or labeling or meet the alternative tank design and construction standards contained in section 1305.14 of the New York city mechanical code.

**Category 2.** An alteration to an oil burner/boiler system that is not subject to cost or duration limitations and that is limited to the following:

1. Replacement of oil-burning boilers or water heater with heat input of 1 million Btu/h (293 kW) or less.
2. Replacement of oil burners with heat input of 2.8 million Btu/h (821 kW) or less.
3. Relocation of an oil burner or oil-burning boiler or water heater within the same, unaltered fire-rated enclosure or room.
4. Placement of a temporary department of buildings registered oil fired mobile boiler at a site for emergency heating.

**LIMITED PLUMBING ALTERATIONS.** An alteration to a plumbing or fuel gas piping system that is limited in scope, falling into one of the following categories:

**Category 1.** An alteration to a plumbing or fuel gas piping system where the total cost of the proposed Category 1 work in the building does not exceed thirty-five thousand dollars in any 12-month period and where the proposed work is limited to the following:

1. The addition of not more than 5 plumbing fixtures or fixture connections in a building within any 12-month period,

including any associated plumbing necessary to serve such additional fixtures or fixture connections;

2. The installation of new plumbing or fuel gas piping, excluding work in Category 2;
3. The installation of up to five new sprinkler heads off of an existing domestic water system within any 12-month period;
4. Rearrangement of not more than 20 sprinkler heads in areas classified in light hazard occupancy, as such term is defined in NFPA 13 as amended by appendix Q of the New York city building code, provided such areas are already sprinklered and such areas will remain in such occupancy, and provided further that all such sprinkler heads are off of a domestic water system;
5. Rearrangement of not more than 20 sprinkler heads in restaurant service areas classified in Group 1 ordinary hazard occupancy, as such term is defined by NFPA 13 as amended by appendix Q of the New York city building code, provided such areas are already sprinklered and such areas will remain in such occupancy, and provided further that all such sprinkler heads are off of a domestic water system;
6. Rearrangement of not more than 20 sprinkler heads in mercantile areas classified in Group 2 ordinary hazard occupancy, as such term is defined by NFPA 13 as amended by appendix Q of the New York city building code, provided such areas are already sprinklered and such areas will remain in such occupancy, and provided further that all such sprinkler heads are off of a domestic water system;
7. In-kind replacement of piping and parts is required for the operation of a standpipe, provided that a sprinkler is not connected or is not now being connected to such system; and
8. Replacement of parts required for the operation of a standpipe system that is not a combined standpipe system.

**Category 2.** An alteration to a plumbing or fuel gas piping system that is not subject to cost or duration limitations and that is limited to the following:

1. The rerouting of existing plumbing or fuel gas branch piping to serve the same number of fixtures and appliances;
2. The in-kind replacement of plumbing fixtures and gas appliances when not constituting a minor alteration or ordinary repair under this code;
3. The relocation and mounting of new plumbing fixtures on existing roughing, other than the mere replacement of existing fixtures constituting a minor alteration or ordinary repair under this code;
4. The installation or replacement of primary backflow preventers;
5. Replacement of gas-fired boilers with heat input of 1 million Btu/h (293 kW) or less;
6. Replacement of gas burners with heat input of 2.8 million Btu/h (821 kW) or less;
7. Relocation of a gas burner/boiler within the same, unaltered fire-rated enclosure or room;
8. In-kind replacement with the following direct-vent appliances that are vented directly through exterior walls serving buildings occupied exclusively as one- or two-family dwellings not more than four stories in height, as provided for in rules by the department, regarding gas-fired boilers, hot water heaters and furnaces;
9. Installation of a new single domestic gas dryer that is vented directly through an exterior wall in buildings occupied exclusively as one- or two-family dwellings not more than four stories in height, as provided for in rules by the department;
10. Placement of a registered gas fired temporary boiler at a site for emergency heating; and
11. Replacement of up to thirty existing sprinkler heads providing that orifice sizes, type and deflector positions remain the same, and all such sprinkler heads are off of a domestic water system.

**LIMITED SPRINKLER ALTERATIONS.** An alteration to a sprinkler system that is limited in scope, falling into one of the following categories:

**Category 1.** An alteration to an existing sprinkler system where the total cost of the proposed Category 1 work in the building does not exceed thirty-five thousand dollars in any 12-month period and where the proposed work is limited to the following:

1. Replacement of parts required for the operation of a sprinkler system;
2. Changes that do not alter the type of sprinkler system;
3. Relocation of piping that does not affect the operation of the sprinkler system;
4. Rearrangement of not more than 20 sprinkler heads in areas classified in light hazard occupancy, as such term is defined in NFPA 13 as amended by appendix Q of the New York city building code, provided such areas are already sprinklered and

such areas will remain in such occupancy;

5. Rearrangement of not more than 20 sprinkler heads in restaurant service areas classified in Group 1 ordinary hazard occupancy, as such term is defined in NFPA 13 as amended by appendix Q of the New York city building code, provided such areas are already sprinklered and such areas will remain in such occupancy;
6. Rearrangement of not more than 20 sprinkler heads in mercantile areas classified in Group 2 ordinary hazard occupancy, as such term is defined by NFPA 13 as amended by appendix Q of the New York city building code, provided such areas are already sprinklered and such areas will remain in such occupancy; and
7. The installation of up to five new sprinkler heads off of an existing sprinkler system.

**Category 2.** An alteration to an existing sprinkler system that is not subject to cost or duration limitations and that is limited to the replacement of sprinkler heads, provided that orifice sizes, type and deflector positions remain the same.

**LIMITED STANDPIPE ALTERATIONS.** An alteration to an existing combined standpipe system that is limited in scope falling into the following category:

**Category 1.** An alteration to an existing combined standpipe system where the total cost of the proposed work in the building does not exceed thirty five thousand dollars in any 12-month period and the proposed work is limited to one or more of the following:

1. Replacement of parts required for the operation of a combined standpipe system; and
2. Relocation of combined standpipe auxiliary hose sources and cabinets within 10 feet (3048 mm) of their original location, provided that the existing covered area is not affected and provided that such relocation complies with this code for a new installation.

**LISTED.** Material identified in a list published by an approved agency that maintains periodic inspection of production of listed material or periodic evaluation services whose listing states either that the material meets identified nationally recognized standards or has been tested and found suitable for a specified purpose when installed in accordance with the manufacturer's installation instructions.

**MAIN USE OR DOMINANT OCCUPANCY (OF A BUILDING).** Refers to a single occupancy classification assigned to a structure by the department according to such structure's main use or dominant occupancy.

**MANUFACTURER'S DESIGNATION.** Identification applied to material by the manufacturer indicating that the material complies with a specified standard or set of rules.

**MARK.** Identification applied to a product by the manufacturer indicating the name of the manufacturer and the function of a product or material.

**MATERIALS.** Materials, assemblies, appliances, equipment, devices, systems, products and methods of construction regulated in their use by this code or regulated in their use by the 1968 building code.

**OCCUPANCY.** The purpose or activity for which a building or space is used or is designed, arranged or intended to be used.

**OWNER.** Any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises.

**PARTY WALL.** A fire division on an interior lot line common to two adjoining buildings.

**PERMIT.** An official document or certificate issued by the commissioner that authorizes performance of specified work or activity.

**PERSON.** An individual, partnership, corporation, or other legal entity.

**PREMISES.** Land, improvements thereon, or any part thereof.

**PRIOR CODE BUILDING.** See 1968 OR PRIOR CODE BUILDING OR STRUCTURE (PRIOR CODE BUILDING).

**PROFESSIONAL CERTIFICATION.** A personal verification of a registered design professional made under such professional's signature and seal that accompanies construction documents and other related documents filed with the department and that attests that such documents do not contain false information and are in compliance with all applicable provisions of law.

**PROGRESS INSPECTION.** Inspection of permitted construction work in progress to verify compliance with the code and with approved construction documents.

**PROJECT.** A design and construction undertaking comprised of work related to one or more buildings or structures and the site improvements. A project is represented by one or more plan/work applications, including construction documents compiled in accordance with article 104 of this chapter, that relate either to the construction of new buildings or structures or to the demolition

or alteration of existing buildings or structures. Applications for a project may have different registered design professionals and different application numbers, and may result in the issuance of one or more permits.

**REGISTERED DESIGN PROFESSIONAL.** An architect or engineer.

**REGISTERED DESIGN PROFESSIONAL OF RECORD.** The registered design professional who prepared or supervised the preparation of applicable construction documents filed with the department.

**REQUIRED.** Shall mean required by the provisions of this code.

**RETAINING WALL.** A wall designed to prevent the lateral displacement of soil or other materials.

**SERVICE EQUIPMENT.** Equipment or systems, and all components thereof, that provide sanitation, power, light, heat, ventilation, air conditioning, refuse disposal, fire-fighting, transportation or other facilities for buildings.

**SIGN-OFF.** The issuance by the department of a letter of completion or certificate of occupancy for permitted work indicating the satisfactory completion of all required inspections and receipt by the department of all required submittal documents.

**SINGLE ROOM OCCUPANCY MULTIPLE DWELLING.** See section 28-107.2.

**SPECIAL INSPECTION.** Inspection of selected materials, equipment, installation, fabrication, erection or placement of components and connections, to ensure compliance with approved construction documents and referenced standards as required by chapter 17 of the New York city building code or elsewhere in this code or its referenced standards.

**SPECIAL INSPECTION AGENCY.** An agency employing one or more persons who are special inspectors and that meets the requirements of department rules.

**SPECIAL INSPECTOR.** An individual employed by a special inspection agency having required qualifications and authorized by department rules to perform or witness particular special inspections required by this code or by the rules of the department, including but not limited to a qualified registered design professional so authorized.

**STRUCTURE.** That which is built or constructed, including among others: buildings, stadia, tents, reviewing stands, platforms, stagings, observation towers, radio towers, tanks, trestles, open sheds, shelters, fences, and display signs.

**SUBMITTAL DOCUMENTS.** Completed application forms, construction documents, reports and any other documents submitted in compliance with this code or other applicable laws and rules including but not limited to special inspection reports, certifications or approvals from other governmental agencies and other data required by this code or by the department.

**SUPERINTENDENT OF CONSTRUCTION (CONSTRUCTION SUPERINTENDENT).** An individual, when authorized pursuant to department rules as qualified to superintend permitted construction work on behalf of the owner.

**USE (USED).** The purpose for which a building, structure, or space is occupied or utilized, unless otherwise indicated by the text. Use (used) shall be construed as if followed by the words “or is intended, arranged, or designed to be used.”

**UTILITY COMPANY OR PUBLIC UTILITY COMPANY.** The term shall be construed to have the same meaning as that contained in section two of the New York state public service law.

**UTILITY CORPORATION OR PUBLIC UTILITY CORPORATION.** The term shall be construed to have the same meaning as that contained in section two of the New York state public service law.

**WORK NOT CONSTITUTING MINOR ALTERATIONS OR ORDINARY REPAIRS.** See section 28-105.4.2.1.

**WRITING (WRITTEN).** The term shall be construed to include handwriting, typewriting, printing, photo-offset, or any other form of reproduction in legible symbols or characters, including, in the discretion of the commissioner, electronic media.

**WRITTEN NOTICE.** A notification in writing delivered by hand to the person or parties intended, or delivered at or sent by mail or in the discretion of the commissioner by electronic media to the last address known to the party giving such notice.

**ZONING RESOLUTION.** The zoning resolution of the city of New York, adopted December fifteenth, nineteen hundred sixty-one, including all amendments thereto.

## **ARTICLE 102 APPLICABILITY**

**§28-102.1 General.** Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where a general requirement conflicts with a specific requirement, the specific requirement shall govern. Where British and metric units of measurement conflict, the British units shall govern.

**§28-102.2 Other laws.** The provisions of this code do not presumptively provide for matters that are contained in the charter, the labor law, the multiple dwelling law, the zoning resolution, or the general city law. Where there is conflict or inconsistency between the requirements of this code and other applicable laws and rules, unless otherwise required, such conflict shall be

resolved in favor of the more restrictive requirement.

**§28-102.3 Separability.** If any clause, sentence, paragraph, section or part of this code shall be adjudged to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**§28-102.4 Existing buildings.** The lawful use or occupancy of any existing building or structure, including the use of any service equipment therein, may be continued unless a retroactive change is specifically required by the provisions of this code or other applicable laws or rules.

**§28-102.4.1 Prior code buildings must comply with the applicable retroactive requirements of the 1968 building code.**

Prior code buildings must comply with the applicable retroactive requirements of the 1968 building code including those requiring the installation of fire safety and building safety systems and the filing of verifying reports with the department of such installations by the dates specified in section 27-228.5 of the administrative code or in other applicable provisions of such 1968 building code. A violation of such provisions shall be a violation of this code.

**§28-102.4.2 Change in use or occupancy.** Except as otherwise provided in sections 28-101.4.1, 28-101.4.2, 28-101.4.3 or 28-101.4.4 changes in the use or occupancy of any building or structure made after July 1, 2008 shall comply with the provisions of this code. Any changes made in the use or occupancy of a building or structure not in compliance with this code shall be prohibited and shall be a violation of this code. After a change in use or occupancy has been made in a building, the re-establishment of a prior use or occupancy that would not be lawful in a new building of the same construction class shall be prohibited unless and until all the applicable provisions of this code and other applicable laws and rules for such reestablished use or occupancy shall have been complied with. A change from a use prohibited by the provisions of this code, but which was permitted prior to July 1, 2008, to another use prohibited by the provisions of this code shall be deemed a violation of this code.

**§28-102.4.3 Alteration of prior code buildings.** Except as otherwise provided in sections 28-101.4.1, 28-101.4.2, 28-101.4.3 and 28-101.4.4, prior code buildings altered after July 1, 2008 shall comply with the provisions of this code. In accordance with subdivision eleven of section three of the multiple dwelling law and article 4 of subchapter 1 of the 1968 building code, at the option of the owner, multiple dwellings erected prior to December 6, 1969 may be altered and buildings erected prior to December 6, 1969 may be converted to multiple dwellings in accordance with applicable provisions of the multiple dwelling law and the building laws and regulations in effect prior to December 6, 1968, provided the general safety and public welfare are not thereby endangered.

**§28-102.4.4 Continuation of unlawful use or occupancy.** The continuation of the unlawful use or occupancy of a building or structure contrary to the provisions of this code, or contrary to the provisions of prior codes or other applicable law or rule, shall be a violation of this code.

**§28-102.4.5 Fire district maps.** The boundaries of fire districts shall be in accordance with the maps set forth in Appendix D of the New York city building code.

**§28-102.5 Regulation of lots.** The regulation of lots, in conformity with the street on which they are situated, shall be calculated at curb level. Where a lot has more than one street frontage, and is so situated that the street frontages intersect, the curb of the longest street frontage shall be used. When the street frontages do not intersect, the curb along each frontage shall be used to one-half the depth of the lot between street frontages. A lot as referred to in this section 28-102.5 shall mean a parcel of land twenty-five feet by one hundred feet, or less, in one ownership whether adjacent land be in the same or other ownership; but, for this purpose, no land in the same ownership may be divided into lots smaller than twenty-five feet by one hundred feet.

**§28-102.6 Appendices.** All enacted appendices are a part of the provisions of this code.

**§28-102.7 References in other laws.** References to provisions of the building code of the city of New York or to chapter 1 of title 27 of the administrative code in other laws shall be deemed to refer to equivalent provisions of the 1968 building code or the New York city construction codes as the context in which such references appear may require.

## **ARTICLE 103 DUTIES AND POWERS OF COMMISSIONER OF BUILDINGS**

**§28-103.1 Jurisdiction.** This code shall be enforced by the commissioner of buildings, pursuant to the provisions of section six hundred forty-three of the New York city charter. However, the commissioner of small business services may also enforce all of the provisions of this code with respect to buildings under the jurisdiction of the department of small business services and the fire commissioner may also enforce all the provisions of this code relating to:

1. The approved number of persons in places of assembly (overcrowding);

2. Obstruction of aisles, corridors, and exits;
3. The posting and availability for inspection of certificates of occupancy or other authorization of lawful occupancy, certificates of compliance and place of assembly certificates of operation;
4. The maintenance of fire, smoke and carbon monoxide detection and alarm systems, fire extinguishing systems, refrigerating systems, storage tanks and auxiliary storage tanks for oil-burning equipment, exit signs and path markings, and any fire or life safety system, equipment or device intended for use by fire fighting personnel or whose use or operation is subject to the New York city fire code or other law or rule enforced by the New York city fire department, and any related installation and signage;
5. The installation and testing of fire alarm systems, smoke-detecting and carbon monoxide detecting devices that are interconnected with a fire alarm system or monitored by a central station, and fire extinguishing systems for commercial cooking appliances;
6. Fire fighting equipment, access to and within premises upon or in which construction and demolition work is being conducted, and the conduct of all construction or demolition work affecting fire prevention and fire fighting;
7. Any exhaust system designed or used for commercial cooking equipment, when such commercial cooking equipment is required to be protected by a fire extinguishing system; and
8. The installation and testing of natural gas distribution piping systems designed for or operated at a gas pressure of 15 psig (103 kPa gauge) or greater.

**§28-103.1.1 Installation of equipment required by the New York city fire code.** Where the installation of exit signs, emergency means of egress illumination, special mechanical ventilation and sprinkler and fire alarm systems is required by the New York city fire code, the fire commissioner shall require such installations to be in accordance with this code.

**§28-103.1.2 Enforcement of New York city construction codes on property within the jurisdiction of the department of small business services.** This code and the 1968 building code shall apply to property within the jurisdiction of the department of small business services pursuant to the New York city charter including, but not limited to, structures on waterfront property used in conjunction with and in furtherance of waterfront commerce and/or navigation. It shall be administered and enforced by the department of small business services in the same manner as property within the jurisdiction of the department.

**§28-103.1.3 Innovation review board.** There is hereby established within the department an innovation review board which shall include as members in addition to the commissioner, the commissioners of environmental protection, health and mental hygiene and design and construction and the chairperson of the city planning commission, or their respective designees. The commissioner shall also designate members from among the fire commissioner and the commissioners of transportation, parks and recreation, consumer affairs, emergency management, housing preservation and development and sanitation and the chairperson of the landmarks preservation commission, and non-governmental organizations and individuals, or their respective designees, with respect to specific matters being considered by the board where the commissioner determines it appropriate to do so.

**§28-103.1.3.1 Meetings and recommendations.** The commissioner shall convene the innovation review board at least quarterly, or more often as the commissioner may deem necessary to address issues in a timely manner to (i) review specific projects that propose to employ new technologies, design or construction techniques, materials or products, (ii) review proposals for approval of and to initiate reviews of such new technologies, design or construction techniques, materials or products in order to determine their environmental and sustainability benefits, (iii) make recommendations as to under what conditions and for what purposes each may be appropriately employed in New York city, and (iv) streamline approvals of specific innovative projects. If the board recommends that a technology, design or construction technique, material or product may appropriately be employed, the commissioner shall consider such recommendation and may by rule or other method as the commissioner deems appropriate, authorize the use of such technology, design or construction technique, material or product and under what conditions and for what purposes each may be appropriately employed. The commissioner shall state in writing to the interagency green team established pursuant to subdivision i of section twenty of the charter what action the commissioner shall take with respect to each such recommendation and the reasons for the action taken.

**§28-103.2 Interpretation.** This code shall be liberally interpreted to secure the beneficial purposes thereof.

**§28-103.3 Variations.** The requirements and standards prescribed in this code shall be subject to variation in specific cases by the commissioner, or by the board of standards and appeals, under and pursuant to the provisions of paragraph two of subdivision (b) of section six hundred forty-five and section six hundred sixty-six of the New York city charter, as amended.

**§28-103.4 Appeals.** An appeal from any decision or interpretation of the commissioner may be taken to the board of standards and appeals pursuant to the procedures of the board, except as provided in section 25-204 of the administrative code or as otherwise

provided in this code.

**§28-103.5 Seal; judicial notice.** The commissioner may design and adopt a seal for the department for use in the authentication of the orders and proceedings of the department, and for such other purposes as the commissioner may prescribe. The courts shall take judicial notice of such seal, and of the signature of the commissioner, the deputy commissioners, and the borough superintendents of the department.

**§28-103.6 Proofs, affidavits and oaths.** Proofs, affidavits and examinations as to any matter arising in connection with the performance of any of the duties of the department may be taken by or before the commissioner, or a deputy commissioner, or such other person as the commissioner may designate; and such commissioner, deputy or other person may administer oaths in connection therewith.

**§28-103.7 Cooperation of other departments.** Upon request of the commissioner, it shall be the duty of all departments to cooperate with the department of buildings at all times, and to furnish to such department such information, reports and assistance as the commissioner may require.

**§28-103.7.1 Sharing results of buildings inspections.** The commissioner, the fire commissioner and the commissioner of the department of environmental protection shall establish a procedure, the implementation of which shall begin within six months of the effective date of this section, to share information regarding violations issued as a result of inspections of buildings meeting agreed-upon criteria that are relevant to the responsibilities of each department.

**§28-103.8 Matters not provided for.** Any matter or requirement essential for fire or structural safety or essential for the safety or health of the occupants or users of a structure or the public, and which is not covered by the provisions of this code or other applicable laws and rules, shall be subject to determination and requirements by the commissioner in specific cases.

**§28-103.9 Additional tests.** Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method of construction does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the commissioner shall have the authority to require tests as evidence of compliance to be made at no expense to the city. Test methods shall be as specified in this code, or by other recognized test standards approved by the commissioner. In the absence of recognized and accepted test methods, the commissioner shall approve the testing procedures. Tests shall be performed as directed by the commissioner. Reports of such tests shall be retained by the department for the period required for retention of public records.

**§28-103.10 Supporting documentation for materials.** Whenever this code or the rules of the department permits the use of material regulated in its use by this code or the 1968 building code without the prior approval of the commissioner, the commissioner may, in the interest of public safety, require the submittal of supporting documentation that any material used or proposed to be used complies with the applicable code standard for such use. Such supporting documentation may consist of but shall not be limited to certification documents of an approved agency, test reports, analysis, computations or other evidence of such compliance.

**\*§28-103.11 Applications and permits.** The department shall receive and review applications, construction documents, and other related documents and shall issue permits, in accordance with the provisions of this code. The department shall, on a weekly basis, send council members and community boards, by electronic mail, a copy of all completed applications for a new building or an alteration that will require a new certificate of occupancy for a building, received during the prior week, disaggregated by community board. In addition, the department shall post such information on its website on a weekly basis.

*\*Section 28-103.11 was amended by [Local Law 10 of 2016](#). This law has an effective date of May 8, 2016.*

**§28-103.12 Identification.** Department personnel shall carry metal badges with suitable inscriptions thereon or other prescribed identification when inspecting structures or premises or otherwise in the performance of their duties under this code.

**§28-103.13 Right of entry.** The commissioner or his or her authorized representatives, in the discharge of their duties, shall have the right to enter upon and inspect, at all reasonable times, any buildings, enclosure, premises, or any part thereof, or any signs or service equipment contained therein or attached thereto for the purpose of determining compliance with the provisions of this code and other applicable building laws and rules. Officers and employees of the department shall identify themselves by exhibiting the official badge or other identification prescribed by the department; and other authorized representatives of the commissioner shall identify themselves by producing and exhibiting their authority in writing signed by the commissioner. If access is not obtained, the commissioner shall have recourse to remedies provided by law to secure entry.

**§28-103.14 Department records.** The department shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

**§28-103.14.1 List of permits for cellular antenna.** The commissioner shall maintain a separate list of alteration permits issued for the erection or placement of antennae used to provide cellular telephone or similar service or any structure related to such service which shall, at a minimum, set forth the name, business address and business telephone number of the applicant, the

date of the application, the date the permit was issued, the location for which the permit was issued, including the premises address and the zoning district, whether residential, commercial, or manufacturing, and the number of permits issued for such purpose at the same location. Such list shall be made available to the public upon request between regular business hours and shall be available to the public in electronic format on a 24-hour basis on the department's website.

**§28-103.15 Insurance.** The commissioner may require applicants for permits to obtain and furnish proof of workers' compensation, disability and general liability insurance in such amounts and in accordance with such specifications as shall be set forth in the rules of the department or as otherwise required by law.

**§28-103.16 Inspections of existing buildings, structures, signs, service equipment and construction machinery and equipment.** In addition to other required inspections, the commissioner may make or require inspections of existing buildings, structures, signs, service equipment installations and construction machinery and equipment to ascertain compliance with the provisions of this code and other laws that are enforced by the department. Such inspections may be made on behalf of the department by officers and employees of the department and other city departments and governmental agencies; and by approved agencies, special inspectors or other persons when the commissioner is satisfied as to their qualifications and reliability. The commissioner may accept inspection and test reports from persons authorized by this code or by the commissioner to perform such inspections. Such reports shall be filed with the department.

**§28-103.17 Certain outside work, employment and financial interests of department employees prohibited.** It shall be unlawful for any officer or employee of the department to be engaged in conducting or carrying on business as an architect, engineer, carpenter, plumber, iron worker, mason or builder, or any other profession or business concerned with the construction, alteration, sale, rental, development, or equipment of buildings. It shall also be unlawful for such employees to be engaged in the manufacture or sale of automatic sprinklers, fire extinguishing apparatus, fire protection devices, fire prevention devices, devices relating to the means or adequacy of exit from buildings, or articles entering into the construction or alteration of buildings, or to act as agent for any person engaged in the manufacture or sale of such articles, or own stock in any corporation engaged in the manufacture or sale of such articles.

**§28-103.18 Investigation of complaints.** The commissioner shall cause all complaints to be investigated. For purposes of investigating complaints of violations of law enforced by the department, the commissioner may by rule establish a program to classify structures based on their enforcement history and may create criteria for such classification and assign enforcement resources accordingly.

**§28-103.18.1 Complaint records.** The department shall keep records of complaints made by any person in reference to any building or other matter under the jurisdiction of the department. Recorded complaints shall include the name and residence of the complainant, the name of the person complained of, the date of the entry of the complaint and any suggested remedies. Except for entries of names and residences of the complainants, such records shall be made available for public examination.

**§28-103.19 Addition, modification, and deletion of referenced standards.** The standards referenced in this code may be added to, deleted or modified pursuant to local law or by rule of the department. Every such rule adding, deleting or modifying a referenced standard shall indicate the promulgating agency of the standard, the standard identification, the effective date and title and the section or sections of this code to which such standard applies. The commissioner shall act in consultation with the fire commissioner on matters relating to fire safety.

**Exception:** Referenced standards in the New York city plumbing code, other than referenced national standards contained in chapter 13 of such code, shall not be added to, deleted, or modified by rule.

**§28-103.20 Existing rules continued.** Rules promulgated by the department in accordance with the law in effect prior to July 1, 2008 shall remain in effect for the matters covered to the extent that such rules are not inconsistent with this code unless and until such rules are amended or repealed by the department.

**§28-103.21 Incident lists.** The commissioner shall post on the department's website a list of every incident that occurred on every construction site within the city of New York that resulted in an injury and/or a fatality, either or both of which were reported to the department or of which the department otherwise became aware. Such list shall be updated monthly. Such list shall identify the owner and the general contractor of the site where the incident occurred, the nature of the work being performed at the time of the incident, violations issued as a result of the incident and to whom such violations were issued, and the number of persons injured and/or killed. Such list shall also set forth the total number of injuries and fatalities reported to the department or of which the department otherwise became aware that occurred on construction sites within each borough and within the entire city for each of the previous five calendar years.

**§28-103.22 Outreach on security grille visibility requirements.** The commissioner shall, through or in cooperation with the department of small business services, the department of consumer affairs, and other city agencies deemed appropriate, develop an outreach program to manufacturers and installers of security grilles, business improvement districts, local development corporations, chambers of commerce and community boards to alert these groups and the businesses that utilize security grilles of the permit requirements and the requirements of this section, the penalties associated with violation thereof and the availability of

any business loans, grants or tax subsidies related to the installation or use of such security grilles.

**§28-103.23 Manual on flood construction and protection standards.** The commissioner shall create and make publicly available, in print and on the department's website, a manual explaining in detail the flood construction and protection requirements and standards applicable to the city. Such manual shall be made available in plain English and Spanish and in other languages as determined by the commissioner and shall be updated as necessary to reflect changes to applicable flood construction requirements and standards. Such manual shall include, but need not be limited to, a description and explanation of the following:

1. The materials requirements imposed by applicable flood construction requirements and standards, including the elements of structures subject to such material requirements;
2. The manner in which specific utilities and attendant equipment must be protected from flooding; and
3. The application of the flood construction and protection requirements and standards to existing structures.

**§28-103.24 Electronic submissions.** The commissioner shall have the discretion to require that any document submitted to the department be submitted electronically.

**\*§28-103.25 Hotel development plans.** Where the department receives applications for new construction of or conversions to transient hotels, as defined in the zoning resolution, the department shall provide written notice, or notice by electronic mail, of the proposed construction or conversion to:

1. The borough president of the borough in which such proposed construction is located;
2. The council member in whose district such proposed construction is located;
3. The community board of the community district in which such proposed construction is located; and
4. If such proposed construction involved land within two or more community districts in a borough, the borough board.

*\*Section 28-103.25 was added by [Local Law 45 of 2015](#). This law has an effective date of November 13, 2015.*

## **ARTICLE 104 CONSTRUCTION DOCUMENTS**

**§28-104.1 General.** The department shall not issue a permit pursuant to this code, or a place of assembly operation certificate pursuant to this code unless and until it approves all required construction documents for such work. The department shall not issue an electrical work permit pursuant to the New York city electrical code for fire and emergency alarm systems, solar panels and wind turbines unless and until it approves all required construction documents for such work. Such construction documents shall be prepared by or under the supervision of a registered design professional as required by this code. An application for an associated work permit shall not be submitted to the department until all required construction documents have been approved.

**§28-104.1.1 Construction documents subject to the New York city fire code.** Except as the New York city fire code may otherwise provide, the construction documents for facilities and systems for which the fire code provides design and installation requirements, including but not limited to fire alarm systems, flammable and combustible liquids, compressed gases, explosives and other hazardous materials; flammable spraying systems and facilities; automatic water sprinkler systems for hazardous material and combustible material storage, and non-water fire extinguishing systems, shall be subject to the review and approval of the fire commissioner in accordance with the New York city fire code. Approval by the department of construction documents for new or existing buildings containing such facilities and systems shall not be construed as approval of such systems and facilities.

**§28-104.2 Application for approval of construction documents.** The department shall assign an application number to and docket all applications for approval of construction documents and any amendments thereto filed with it. The department shall examine the construction documents promptly after their submission. The examination shall be made under the direction of the commissioner for compliance with the provisions of this code and other applicable laws and rules. The personnel employed for the examination of construction documents shall be qualified registered design professionals, experienced in building construction and design.

**§28-104.2.1 Less than full examination of applications for construction and related document approval.** The commissioner may, in the commissioner's discretion, establish a program whereby construction and related documents may be accepted with less than full examination by the department based on the professional certification of an applicant who is a registered design professional.

**§28-104.2.1.1 Effect of acceptance.** Except as otherwise specified in this code or in the rules of the department, for the purposes of this code, the acceptance of construction and related documents in accordance with such program shall have the same force and effect as the approval of construction and related documents after full examination by the department. Except as otherwise specified in this code or in the rules of the department, references in this code to approved construction

and/or related documents or to the approval of construction and/or related documents shall also be deemed to refer to accepted construction and related documents or to the acceptance of construction and related documents, as applicable.

**§28-104.2.1.2 Program requirements.** The commissioner may establish qualifications and requirements for registered design professionals to participate in such program and may exclude, suspend or otherwise sanction participants for cause.

**§28-104.2.1.3 Mandatory program requirements.** Registered design professionals participating in such program shall be subject to sections 28-104.2.1.3.1 through 28-104.2.1.3.2.

**§28-104.2.1.3.1 Probation.** A registered design professional shall not be eligible to participate in the program during any period of probation imposed as a sanction by the board of regents pursuant to section 6511 of the education law.

**§28-104.2.1.3.2 Mandatory sanctions.** The commissioner shall, after the opportunity for a hearing before the office of administrative trials and hearings in accordance with department rules, exclude, suspend or otherwise condition the participation of a registered design professional who (i) knowingly or negligently submits a professional certification of an application and/or construction and other related documents that contains false information or is not in compliance with all applicable provisions of law, or (ii) submits two professionally certified applications for construction document approval within any 12-month period containing errors that result in revocation of an associated permit or that otherwise demonstrate incompetence or a lack of knowledge of applicable laws. The term “otherwise condition” shall mean limitations on such professional’s participation in the program, such as, but not limited to, audits and monitoring of the registered design professional’s applications and other submissions. For the purposes of this section, a professionally certified application shall include the professional certification of construction and other related documents and the satisfaction of objections issued at plan examination.

**§28-104.2.1.3.2.1 Reinstatement.** A registered design professional who is excluded from the program in accordance with section 28-104.2.1.3 may apply for reinstatement one year or more after such exclusion. An applicant who the commissioner finds is qualified to resume participation in the program shall be on probation for a period of not less than 6 months after reinstatement and during that time shall as a condition of such reinstatement attend one or more training or continuing education courses, approved by the department, related to compliance with the building code and related laws and rules and the zoning resolution. The professional shall submit satisfactory proof of the successful completion of such training or continuing education courses to the department.

**§28-104.2.1.3.2.2 Mandatory permanent revocation.** The commissioner shall permanently revoke, without the opportunity of restoration, the professional certification privileges of an engineer or architect who, while on probation, professionally certifies an application, plans, construction or other related documents that contains false information or is not in compliance with all applicable provisions of law or who otherwise demonstrates incompetence or a lack of knowledge of applicable laws.

**§28-104.2.1.3.2.3 Construction.** Nothing herein shall be construed to limit the commissioner’s power, consistent with state and local law, to adopt rules that include additional grounds to limit the filing privileges of or otherwise sanction registered design professionals, after the opportunity for a hearing, who it determines, knowingly or negligently submit applications or other documents to the department that contain false information or are not in compliance with all applicable provisions of law or that otherwise demonstrate incompetence or a lack of knowledge of applicable law or standards.

**§28-104.2.1.4 Database.** The department shall create and maintain a database of all registered design professionals who have been excluded, suspended or otherwise sanctioned by the department. Within 7 business days of the date a sanction is imposed, the department shall post on its website and shall make available upon request, the name of the registered design professional, a description of the sanction, the initial date of the sanction, the reinstatement date, if applicable, the address of the premises for which the application associated with the sanction was submitted, and whether the sanction was imposed after a hearing or a settlement. The department shall provide requested information concerning the exclusion, suspension or other sanction of a specific registered design professional within 30 days of such request.

**§28-104.2.1.5 Applicant requirement.** The program shall include a condition that the applicant remain with the project until it is signed-off by the department and that if the applicant withdraws from or is unable to continue a project before the issuance of a letter of completion or certificate of occupancy, as applicable, all work shall stop and no permit, letter of completion or certificate of occupancy shall be issued until a successor registered design professional is designated as applicant of record and such person:

1. Completes a thorough review and evaluation of the previously filed and accepted construction and other related documents to determine that they conform to the applicable laws and rules in accordance with rules of the board or regents, 8 NYCRR 29.3(a)3;
2. Inspects any built work to confirm that the observable conditions are consistent with the previously filed and accepted construction documents; and

3. Based on the result of the evaluation and inspections, secures department approval after examination of construction and other related documents submitted by and under signature and seal of the successor. All deficiencies shall be addressed by the successor in such documents.

**§28-104.2.1.6 Notice to the state department of education.** The department shall provide written notice to the New York state department of education of any registered design professional who was the subject of any disciplinary proceeding where there has been an adverse determination or sanction by the department including any settlement agreement that is reached between the parties that resulted in a sanction of privileges being imposed by the department. Such notice shall be sent within ten business days after a determination is made in any such disciplinary proceeding or after a settlement of such proceeding has been reached, and shall include the name, and business firm name and address of such registered design professional, as well as any supporting documentation for the sanction imposed. The department shall also provide such notice to the state department of education of any registered design professional that has been the subject of any disciplinary proceeding where there has been an adverse determination or sanction by the department within the five calendar years immediately preceding the effective date of this section.

**§28-104.2.2 Approval or acceptance to be indicated on construction documents.** All construction documents, when approved, shall be stamped or endorsed "approved" under the official method of the department, followed by a notation of the date except that construction documents accepted with less than full examination by the department shall be stamped or endorsed "accepted" instead of "approved". One set of "approved" or "accepted" construction documents shall be retained by the department and another set shall be maintained at the project site until the work authorized by the permit is completed and signed-off by the department.

**§28-104.2.3 Time limitation of application.** An application for approval of construction documents shall be deemed to have been abandoned 12 months after the date of its submission, unless such application has been diligently prosecuted after rejection in whole or in part, or unless a permit shall have been issued pursuant to this code, except that the commissioner may upon application, for reasonable cause, grant extensions of time for additional 12-month periods.

**§28-104.2.4 Conditions of approval.** All construction documents approved by the commissioner shall be conditioned upon and subject to compliance with the requirements of this code and other applicable laws and rules in effect at the time of issuance of the associated work permit or place of assembly certificate of operation.

**§28-104.2.5 Phased or partial approval.** In the case of construction documents for the construction of new buildings or the alteration of buildings, the commissioner may grant partial approval of construction documents before the construction documents for the entire building or structure have been submitted. The approval of such partial applications will be subject to the submittal and approval of construction documents, filed together, comprising:

1. The lot diagram showing the exact location of the lot and dimensions to the nearest corner;
2. A complete zoning analysis showing compliance of the proposed work with the zoning resolution;
3. The foundation plans, as provided for in section 106.7.1 of the New York city building code, as well as a loading diagram and column schedule for the entire building or structure;
4. Earthwork plans, as provided for in section 107.8 of the New York city building code; and
5. The floor and roof plans showing compliance with exit requirements, as provided for in this code. Structural calculations that justify the foundation design shall be made available to the department when requested by the department. Following the partial approval of such construction documents, the issuance of a foundation and earthwork permit shall be subject to submission of required submittal documents, including related support of excavation documents in accordance with section 28-105.2.1. The owner and the holder of such a foundation and earthwork permit shall proceed at their own risk with the construction operation and without assurance that a permit for the entire structure will be granted. In the event that the project does not proceed, any open excavation shall be filled and graded in accordance with chapter 33 of the New York city building code.

The issuance of such foundation and earthwork permit is subject to submission of required submittal documents. The owner and the holder of such foundation and earthwork permit shall proceed at their own risk with the construction operation and without assurance that a permit for the entire structure will be granted.

**§28-104.2.6 Deferred submittal.** With the prior approval of the department, the applicant may defer submittal of portions of the design until a specified period of time after the issuance of a permit. The applicant shall list the deferred submittal items on the initial application for construction document approval. The deferred submittal items shall not be constructed or installed until the design and submittal documents for the item have been approved by the department.

**§28-104.2.7 Time period for review.** Completed construction documents complying with the provisions of this code and other applicable laws and rules shall be approved by the commissioner and written notice of approval shall be given the

applicant promptly and no later than 40 calendar days after the submission of a complete application.

**Exceptions:**

1. On or before the fortieth day, the commissioner may, for good cause shown and upon notification to the applicant, extend such time for an additional 20 calendar days.
2. Such time period for review shall commence in accordance with article 107 for single room occupancy multiple dwellings.

**\*§28-104.2.7.1 Notification of approval.** The department shall, on a weekly basis, send council members and community boards, by electronic mail, a copy of all notices of approval for applications for a new building or an alteration that will require a new certificate of occupancy for a building, sent to applicants during the prior week, disaggregated by community board. In addition, the department shall post such information on its website on a weekly basis.

*\*Section 28-104.2.7.1 was added by [Local Law 10 of 2016](#). This law has an effective date of May 8, 2016.*

**\*§28-104.2.8 Notification of rejection.** Applications failing to comply with the provisions of this code and other applicable laws and rules shall be rejected and written notice of rejection, stating the grounds of rejection, shall be given the applicant promptly and not later than the date required in section 28-104.2.7. The department shall, on a weekly basis, send council members and community boards, by electronic mail, a copy of all notices of a first rejection for applications for a new building or an alteration that will require a new certificate of occupancy for a building, sent to applicants during the prior week, disaggregated by community board. In addition, the department shall post such information on its website on a weekly basis.

*\*Section 28-104.2.8 was amended by [Local Law 10 of 2016](#). This law has an effective date of May 8, 2016.*

**§28-104.2.9 Resubmission.** Whenever an application has been rejected and is thereafter revised and resubmitted to meet the stated grounds of rejection, the revised application and construction documents shall be approved if they meet the stated grounds of rejection and otherwise comply with the provisions of this code and other applicable laws and rules or shall be rejected if they fail to meet the stated grounds of rejection or otherwise fail to so comply. Written notice of approval or written notice of rejection, stating the grounds of rejection, shall be given the applicant promptly and not later than 20 calendar days after the resubmission of such documents.

**§28-104.2.10 Revocation of approval.** The commissioner may, on notice to the applicant, revoke the approval of construction documents for failure to comply with the provisions of this code or other applicable laws or rules; or whenever there has been any false statement or any misrepresentation as to a material fact in the submittal documents upon the basis of which such approval was issued; or whenever an approval has been issued in error and conditions are such that approval should not have been issued. Such notice shall inform the applicant of the reasons for the proposed revocation and that the applicant has the right to present to the commissioner or his or her representative within 10 business days of personal service or 15 calendar days of the posting of service by mail, information as to why the approval should not be revoked.

**§28-104.2.10.1 Effect on work permit.** The effect of revocation of approval of construction documents is the automatic revocation of all work permits that may have been issued based on such construction documents.

**§28-104.3 Amended construction documents.** Subject to the time limitations set forth in this code, amendments to approved construction documents shall be submitted, reviewed and approved before the work or equipment is completed; and such amendments when approved shall be deemed part of the original construction documents. The department may allow minor revisions of construction documents to be made and submitted to the department after the completion of work but prior to sign-off of the work in accordance with department rules.

**§28-104.4 Place of filing.** Except as otherwise provided by rule, applications for construction document approval shall be filed in the department office in the borough in which the work or equipment is located or at the discretion of the commissioner shall be submitted electronically.

**§28-104.5 Fees.** Filing fees shall be paid as required by article 112.

**§28-104.6 Applicant.** The applicant for approval of construction documents shall be the registered design professional who prepared or supervised the preparation of the construction documents on behalf of the owner.

**Exception:** The applicant may be other than a registered design professional for:

1. Limited oil burner/boiler alterations, limited plumbing alterations, limited sprinkler alterations, and limited standpipe alterations, where the applicant is licensed to perform such work pursuant to this code;
2. Demolition applications other than those specified in section 3306.5 of the New York city building code, where the applicant is the demolition contractor performing such demolition. In such cases, the commissioner may require structural plans designed by a registered design professional to address any critical structural, sequencing or site safety

- items;
3. Elevator applications;
  4. Applications for work falling within the practice of landscape architecture as defined by the New York state education law, including but not limited to landscaping and vegetation plans, tree protection plans, erosion and sedimentation plans, grading and drainage plans, curb cuts, pavement plans, and site plans for urban plazas and parking lots, where the applicant is a landscape architect. Landscape architects shall not file plans for stormwater management and plumbing systems;
  5. Other categories of work consistent with rules promulgated by the commissioner.

**§28-104.6.1 Verification of professional qualification required.** The department shall not accept construction documents or other documents submitted in connection with applications for construction document approval or work permits under this code by any person representing that he or she is a registered design professional or landscape architect without verifying, by means of lists compiled and made available by the New York state department of education pursuant to paragraph e-1 of subdivision four of section sixty-five hundred seven of the education law, that such person meets the qualifications established by law to practice as an architect or engineer in New York state.

**§28-104.7 Submittal of construction documents.** All construction documents submitted to the department shall contain such information and shall be in such form as shall be set forth in this section 28-104.7 and the rules of the department. Construction documents shall also conform to standards as may be prescribed in the applicable sections of the construction codes.

**§28-104.7.1 Scope.** Construction documents shall be complete and of sufficient clarity to indicate the location and entire nature and extent of the work proposed, and shall show in detail that they conform to the provisions of this code and other applicable laws and rules; if there exist practical difficulties in the way of carrying out the strict letter of the code, laws or rules, the applicant shall set forth the nature of such difficulties.

**§28-104.7.2 Forms.** The applicant shall submit construction documents on or accompanied by forms provided by the department.

**§28-104.7.3 Media.** Construction documents shall be printed upon suitable material, or presented as electronic media documents as determined by the commissioner. Plans shall be drawn to suitable scale.

**§28-104.7.4 Quantities.** The applicant shall submit the number of copies of construction documents as the commissioner shall require.

**§28-104.7.5 Citations to code sections required.** In no case shall terms such as “code compliant”, “approved”, “legal” or similar terms be used in the construction documents as a substitute for specific reference to a particular code section, approval or standard in order to show compliance with code requirements or other applicable laws and rules.

**§28-104.7.6 City datum.** All elevations noted in the construction documents shall be referred to and clearly identified as the North American vertical datum of 1988 (“NAVD”) as established and maintained by National Geodetic Survey of the National Ocean Service, National Oceanic and Atmospheric Administration or successor agency, which is hereby established as the city datum. Neither the United States coast and geodetic survey mean sea level datum of 1929 (national geodetic vertical datum, (“NGVD”) nor any of the five borough data as established by the former Board of Estimate and Apportionment shall be referred to in construction documents except as may be required for the purpose of demonstrating conversion to the NAVD. Conversions to NAVD shall be performed by registered design professionals or surveyors. Conversion to and from borough data and NGVD shall be performed using tables 104.7.6.1 through 104.7.6.5.

**TABLE 104.7.6.1**

<b>BRONX ELEVATIONS</b>	<b>TO OBTAIN EQUIVALENCY:</b>	<b>NGVD ELEVATIONS</b>
10.000	→add 2.608→	12.608
7.392	→add 2.608→	10.000

**TABLE 104.7.6.2**

<b>BROOKLYN ELEVATIONS</b>	<b>TO OBTAIN EQUIVALENCY:</b>	<b>NGVD ELEVATIONS</b>
10.000	→add 2.547→	12.547
7.453	→add 2.547→	10.000

**TABLE 104.7.6.3**

<b>MANHATTAN ELEVATIONS</b>	<b>TO OBTAIN EQUIVALENCY:</b>	<b>NGVD ELEVATIONS</b>
-----------------------------	-------------------------------	------------------------

10.000	→add 2.752→	12.752
7.248	→add 2.752→	10.000

**TABLE 104.7.6.4**

QUEENS ELEVATIONS	TO OBTAIN EQUIVALENCY:	NGVD ELEVATIONS
10.000	→add 2.725→	12.725
7.275	→add 2.725→	10.000

**TABLE 104.7.6.5**

STATEN ISLAND ELEVATIONS	TO OBTAIN EQUIVALENCY:	NGVD ELEVATIONS
10.000	→add 3.192→	13.192
6.808	→add 3.192→	10.000

**§28-104.7.7 Identification of special and progress inspections.** Whenever work or materials are subject to special inspection, as provided in this code, such work or materials shall be listed on the title sheet of the construction documents, or the sheet immediately following, as subject to special or progress inspection.

**§28-104.7.8 Identification of materials.** Construction documents shall identify all materials proposed to be used, including identification of the test standard to which they conform, and where applicable, supporting information or test data from the manufacturer attesting to such conformance.

**§28-104.7.9 Energy conservation code.** The application shall contain all information required to demonstrate compliance with the New York city energy conservation code. This information shall include signed and sealed construction drawings, including electrical drawings, to the extent that they demonstrate such energy code compliance, as required by such energy code and rules.

**§28-104.7.10 Preparer.** Each plan or drawing shall contain the license number, seal, signature (or equivalent as approved by the commissioner) and address of the registered design professional or landscape architect who prepared or supervised the preparation of the plans.

**§28-104.7.11 Additional information.** In addition to the data and information specified in this code and the rules of the department, the commissioner is authorized to require the submission of additional plans, surveys, computations, analyses, test reports, photographs, special inspection and such other data and information as may be necessary to determine compliance with this code and other applicable laws and rules.

**§28-104.7.12 Waiver of certain documents.** The commissioner is authorized to waive the submission of any of the required construction documents and other data if review of such documents is not necessary to ascertain compliance with this code or not required for the phase of work for which a permit is sought.

**§28-104.7.13 Identification of work involving raising or moving a building.** Where the lowest above-grade floor or the lowest subgrade floor of a building is to be raised, lifted, elevated or moved, such work shall be listed on the title sheet of the construction documents as subject to special inspection.

**§28-104.7.14 Identification of certain I-1 and I-2 occupancies and of certain adult homes, enriched housing, community residences and intermediate care facilities as exempt from temporary external generator connection requirements.** The title sheet of construction documents for the following buildings shall list whether the building is exempt from the requirement to provide connections for temporary external generators pursuant to any exception contained in Sections G304.5.1 or G304.5.2 of appendix G of the New York city building code, as applicable:

1. A new or substantially improved building, as such term is defined in appendix G of the New York city building code, that contains space classified in occupancy group I-1 or I-2 or space that is an adult home, enriched housing, community residence or intermediate care facility classified as occupancy group R pursuant to an exception to section 308.2.1 or 308.2.2 of the New York city building code, and that is located in an area of special flood hazard, as such term is defined in appendix G of the New York city building code; and
2. A new or substantially improved building that contains space classified as an occupancy group I-2 hospital and that is located in a shaded X-Zone, as such terms are defined in appendix G of the New York city building code.

**§28-104.7.15 Identification of certain hospitals as exempt from temporary external boiler or chiller connection requirements.** The title sheet of construction documents for a new or substantially improved building, as such term is defined in

appendix G of the New York city building code, that contains space classified as an occupancy group I-2 hospital and that is located in an area of special flood hazard or shaded X-Zone, as such terms are defined in appendix G of the New York city building code, shall list whether the requirement to provide connections for temporary external boilers and chillers pursuant to Item 2 of section G304.5.2 is inapplicable as a result of such building having its boiler and chiller plants located at or above the applicable design flood elevation.

**§28-104.8 Applications.** All applications shall comply with sections 28-104.8.1 through 28-104.8.4.

**§28-104.8.1 Applicant statements.** The application shall contain the following signed and sealed statements by the applicant:

1. A statement certifying that the applicant is authorized by the owner to make the application and certifying that, to the best of the applicant's knowledge and belief, the construction documents comply with the provisions of this code or the 1968 building code, if applicable, and other applicable laws and rules; if there exist practical difficulties in the way of carrying out the strict letter of the code, laws or rules, the applicant shall set forth the nature of such difficulties in such signed statement;
2. A statement certifying (i) that the site of the building to be altered or demolished, or the site of the new building to be constructed, contains no occupied housing accommodations subject to rent control or rent stabilization under chapters 3 and 4 of title 26 of the administrative code, or (ii) that the owner has notified the New York state division of homes and community renewal of the owner's intention to file such plans and has complied with all requirements imposed by the regulations of such agency as preconditions for such filing; or (iii) that the owner has not notified such agency of the owner's intention to file because the nature and scope of the work proposed, pursuant to such regulations, does not require notification;
3. A professional certification; and
4. A statement certifying compliance with the New York city energy conservation code.

**§28-104.8.2 Owner statement.** The application shall contain a signed statement by the owner, and, in the case of cooperative or condominium forms of ownership, the application shall also contain a statement by the cooperative or condominium board, affirming that the applicant is authorized to make the application and, if applicable, acknowledging that construction and related documents will be accepted with less than full examination by the department based on the professional certification of the applicant. Such statement shall list the owner's full name and address, as well as the names of the principal officers, partners or other principals if a corporation, partnership or other entity. Principal officers of a corporation shall be deemed to include the president, vice presidents, secretary and treasurer. Where a current deed holder with a valid property interest or a court appointed entity or equivalent in charge of the property, or in the case of a cooperative or condominium unit, the cooperative or condominium board, notifies the department in writing that the applicant does not have authority to make the application, the department is authorized pursuant to section 28-104.2.10 to revoke approval of construction documents.

**§28-104.8.3 Information of applicant, filing representative, and owner.** The application shall set forth the full names, addresses, telephone numbers, and where available, e-mail addresses of the following persons and where any of such persons are corporations, partnerships or other business entities, the names and addresses of the principal officers, partners or other principals of such entity:

1. The applicant;
2. The filing representative;
3. The owner, and, in the case of cooperative or condominium forms of ownership, cooperative owners' corporation, or condominium owners' association; and
4. Where a person other than the owner has engaged the applicant, such cooperative unit shareholder, condominium unit owner, lessee, or mortgagee.

**§28-104.8.4 Tenant protection plan.** Construction documents for alterations of buildings in which any dwelling unit will be occupied during construction shall include a tenant protection plan. Such plan shall contain a statement that the building contains dwelling units that will be occupied during construction and shall indicate in sufficient detail the specific units that are or may be occupied during construction, the means and methods to be employed to safeguard the safety and health of the occupants, including, where applicable, details such as temporary fire-rated assemblies, opening protectives, or dust containment procedures. The elements of the tenant protection plan may vary depending on the nature and scope of the work but at a minimum shall make detailed and specific provisions for:

1. **Egress.** At all times in the course of construction provision shall be made for adequate egress as required by this code and the tenant protection plan shall identify the egress that will be provided. Required egress shall not be obstructed at any time except where approved by the commissioner.
2. **Fire safety.** All necessary laws and controls, including those with respect to occupied dwellings, as well as additional

safety measures necessitated by the construction shall be strictly observed.

3. **Health requirements.** Specification of methods to be used for control of dust, disposal of construction debris, pest control and maintenance of sanitary facilities, and limitation of noise to acceptable levels shall be included.

3.1. There shall be included a statement of compliance with applicable provisions of law relating to lead and asbestos.

4. **Compliance with housing standards.** The requirements of the New York city housing maintenance code, and, where applicable, the New York state multiple dwelling law shall be strictly observed.
5. **Structural safety.** No structural work shall be done that may endanger the occupants.
6. **Noise restrictions.** Where hours of the day or the days of the week in which construction work may be undertaken are limited pursuant to the New York city noise control code, such limitations shall be stated.

**§28-104.9 Coastal zones and water-sensitive inland zones.** Construction documents shall comply with sections 28-104.9.1 through 28-104.9.6 relating to work in coastal zones and water-sensitive inland zones.

**§28-104.9.1 Definitions.** As used in section 28-104.9 the following terms shall have the following meanings:

**COASTAL AREAS OF SPECIAL FLOOD HAZARD.** Areas of land as identified on the flood insurance rate maps referenced in New York city building code section G402 pursuant to article 36 of the New York state environmental conservation law.

**COASTAL EROSION HAZARD AREAS.** Areas of land as identified on the final map issued by the New York state department of environmental conservation in accordance with section 34-0104 of the New York state environmental conservation law.

**COASTAL ZONES AND WATER-SENSITIVE INLAND ZONES.** Areas of land comprising tidal wetlands, freshwater wetlands, coastal erosion hazard areas, coastal areas of special flood hazard or rivervine and other inland areas of special flood hazard.

**FRESHWATER WETLANDS.** Areas of land as identified on the final map issued by the New York state department of environmental conservation in accordance with section 24-0301 of the New York state environmental conservation law, as well as any adjacent areas as such term is defined in section 662.1 of title six of the New York code of rules and regulations.

**RIVERVINE AND OTHER INLAND AREAS OF SPECIAL FLOOD HAZARD.** Areas of land, including floodways, as identified on the flood insurance rate maps referenced in section G402 of the New York city building code pursuant to article 36 of the New York state environmental conservation law.

**STRUCTURE.** Any object constructed, installed or placed in, on or under land or water, including, but not limited to, a building, permanent shed, deck, in-ground or aboveground swimming pool, garage, mobile home, paving, road, public utility service distribution, transmission and collection system, storage tank, pier, dock, wharf, groin, jetty, seawall, revetment, bulkhead or breakwater.

**TIDAL WETLANDS.** Areas of land as identified on the tidal wetland inventory issued by the New York state department of environmental conservation in accordance with section 25-0201 of the New York state environmental conservation law, as well as any adjacent areas as such term is defined in section 661.4 of title six of the New York code of rules and regulations.

**§28-104.9.2 Statement and submission by applicant.** It shall be the duty of an applicant for construction document approval to determine whether the proposed work is located within a coastal zone or a water-sensitive inland zone subject to section 28-104.9.3 and/or section 28-104.9. Applications for construction document approval shall include a statement by the applicant indicating whether the proposed work is located within a coastal zone or water-sensitive inland zone subject to such sections. The failure to disclose that proposed work is within a coastal zone or water-sensitive inland zone subject to such sections shall be a violation of this code.

**§28-104.9.3 Coordination with department of environmental conservation and other agencies.** The commissioner shall not approve construction documents for construction of a new structure, the horizontal enlargement of a structure or to excavate or fill any land, within a tidal wetland, a tidal wetland adjacent area, freshwater wetland, freshwater wetland adjacent area, or coastal erosion hazard area, without documentation satisfactory to the commissioner that the New York state department of environmental conservation, and such other governmental agencies as are applicable, have issued any applicable permits or other approvals for such construction, excavation or fill.

**§28-104.9.4 Compliance with special flood hazard area requirements mandated within special flood hazard areas.** Within coastal areas of special flood hazard and areas of special flood hazard, the commissioner shall not approve construction documents for construction or alteration of buildings or structures, including alterations pursuant to section 28-101.4.3, or for any other activity regulated by section G201 of the New York city building code, unless the application complies with the requirements of Appendix G of the New York city building code.

**§28-104.9.5 False statement or omission.** No person shall submit an application for construction document approval for any

structure within a coastal zone or water-sensitive inland zone which falsely avers or by omission causes the department to determine that the subject property is not located within such zone or that the New York state department of environmental conservation and other appropriate agencies have issued the appropriate permits or approvals when they did not.

**§28-104.9.6 Revocation of approval of construction documents.** Where the department determines that work is located within a coastal zone or water-sensitive inland zone after construction documents have been approved for such work and/or that the documentation required by sections 28-104.9.2 through 28-104.9.4 has not been submitted, the department shall revoke such approval and any associated work permits that may have been issued for such work in accordance with section 28-104.2.10.

**§28-104.10 Construction documents for sites near subways or tunnels.** Construction documents shall not be approved unless all applicable agency approvals regarding nearby subways or tunnels as provided for in sections 3304.3.3 and 3304.3.5 of the New York city building code have been submitted to the department.

## **ARTICLE 105 PERMITS**

**§28-105.1 General.** It shall be unlawful to construct, enlarge, alter, repair, move, demolish, remove or change the use or occupancy of any building or structure in the city, to change the use or occupancy of an open lot or portion thereof, or to erect, install, alter, repair, or use or operate any sign or service equipment in or in connection therewith, or to erect, install, alter, repair, remove, convert or replace any gas, mechanical, plumbing, fire suppression or fire protection system in or in connection therewith or to cause any such work to be done unless and until a written permit therefore shall have been issued by the commissioner in accordance with the requirements of this code, subject to such exceptions and exemptions as may be provided in section 28-105.4.

**§28-105.1.1 Notification to fire department.** The commissioner, in consultation with the fire commissioner, shall establish a procedure for notifying the fire department of the issuance of any permit that will result in the issuance of a new or amended certificate of occupancy or other change in the use or occupancy of the premises. In no instance shall the required notice be given to the fire department more than one business day after the date of the issuance of the permit.

**§28-105.2 Classification of work permits.** For the purposes of this code, work permits shall be classified as follows:

1. **New building permits:** for the construction of new buildings, including as provided for in section 28-101.4.5.
2. **Alteration permits:** for the alteration of buildings or structures, including new and existing sign structures and partial demolition in conjunction with such buildings or structures.
3. **Foundation and earthwork permits:** for the construction or alteration of foundations, including earthwork, excavation, fill, and foundation insulation.
4. **Earthwork permits:** for work solely involving earthwork, excavation, or fill operations.
5. **Full demolition permits:** for the full demolition and removal of buildings or structures.
6. **Plumbing permits:** for the installation or alteration of plumbing and plumbing systems, including gas piping. Such permits shall include permits for limited plumbing alterations.
7. **Sign permits:** for the erection, installation or alteration of signs.
8. **Service equipment permits:** for the installation or alteration of service equipment, including but not limited to air conditioning and ventilating systems, boilers, elevators, escalators, moving walkways, dumbwaiters, mobile boilers and mobile oil tanks. Such permits shall include permits for limited oil burner/boiler alterations.
9. **Temporary construction equipment permits:** for the erection, installation and use of temporary structures to facilitate construction and/or safety during construction, including but not limited to temporary fences, railings, catch platforms, over-the-sidewalk chutes, footbridges, sidewalk sheds, and scaffolds.
10. **Fire protection and suppression system permits:** for the installation and alteration of fire protection and suppression systems, including but not limited to sprinkler systems, standpipe systems, non-water systems, and fire suppression systems for commercial cooking equipment. Such permits shall include permits for limited sprinkler alterations and limited standpipe alterations.
11. **Crane and derrick permits:** for the use of power operated cranes and derricks during construction.

**§28-105.2.1 Submittal documents required for foundations and earthwork.** Prior to the issuance of any permit for work that includes foundations and/or earthwork, submittal documents clearly illustrating support of excavation design, including but not limited to stepping, sheeting, sloping, shoring, and bracing, and any protective railings or equipment required by chapter 33 of the New York city building code shall be required.

**§28-105.2.2 Submittal documents required for partial demolition.** Prior to the issuance of any permit for work that includes partial demolition, submittal documents shall be required in accordance with chapter 33 of the New York city building code.

**§28-105.3 Separate permits required.** Separate work permits shall be required, as provided above, except that separate permits for foundations and earthwork, or for the installation or alteration of air conditioning systems, ventilation systems, and heating systems shall not be required whenever such work is included in and forms a part of the construction documents filed for the construction of a new building or the alteration of a building or structure.

**§28-105.4 Work exempt from permit.** Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code, the zoning resolution or any other law or rules enforced by the department. Such exemptions shall not relieve any owner of the obligation to comply with the requirements of or file with other city agencies. Unless otherwise indicated, permits shall not be required for the following:

1. Emergency work, as set forth in section 28-105.4.1.
2. Minor alterations and ordinary repairs, as described in section 28-105.4.2.
3. Certain work performed by a public utility company or public utility corporation, as set forth in section 28-105.4.3.
4. Ordinary plumbing work, as set forth in section 28-105.4.4.
5. Permits for the installation of certain signs, as set forth in section 28-105.4.5.
6. Geotechnical investigations, as set forth in section 28-105.4.6.
7. Other categories of work as described in department rules, consistent with public safety.

**§28-105.4.1 Emergency work.** Work that would otherwise require a permit may be performed without a permit to the extent necessary to relieve an emergency condition. An application for a permit shall be submitted within 2 business days after the commencement of the emergency work and shall include written description of the emergency condition and the measures undertaken to mitigate the hazard. Emergency work may include but shall not be limited to:

1. Erection of sidewalk sheds, fences, or other similar structures to protect the public from an unsafe condition.
2. Stabilization of unsafe structural conditions.
3. Repair of gas leaks.
4. Repair or replacement of heating or hot water equipment servicing residential occupancies during the heating season as established by the New York city housing maintenance code or education occupancies between November 1<sup>st</sup> and May 1<sup>st</sup>.
5. Replacement of parts required for the operation of a combined standpipe or sprinkler system.

**§28-105.4.2 Minor alterations and ordinary repairs.** A permit shall not be required for minor alterations and ordinary repairs.

**§28-105.4.2.1 Definitions.** The following words and terms shall, for the purposes of this section 28-105.4.2 and as used elsewhere in this code, have the meanings shown herein.

**MINOR ALTERATIONS.** Minor changes or modifications in a building or any part thereof, excluding additions thereto, that do not in any way affect health or the fire or structural safety of the building or the safe use and operation of the service equipment therein. Minor alterations shall not include any of the work described as “work not constituting minor alterations or ordinary repairs.”

**ORDINARY REPAIRS.** Replacements or renewals of existing work in a building, or of parts of the service equipment therein, with the same or equivalent materials or equipment parts, that are made in the ordinary course of maintenance and that do not in any way affect health or the fire or structural safety of the building or the safe use and operation of the service equipment therein. Ordinary repairs shall include the repair or replacement of any plumbing fixture, piping or faucets from any exposed stop valve to the inlet side of a trap. Ordinary repairs shall not include any of the work described as “work not constituting minor alterations or ordinary repairs.”

**WORK NOT CONSTITUTING MINOR ALTERATIONS OR ORDINARY REPAIRS.** Minor alterations or ordinary repairs shall not include:

1. The cutting away of any load bearing or required fire rated wall, floor, or roof construction, or any portion thereof.
2. The removal, cutting, or modification of any beams or structural supports;
3. The removal, change, or closing of any required exit;
4. The addition, rearrangement, relocation, removal or replacement of any parts of the building affecting loading or exit requirements, or light, heat, ventilation, or elevator requirements or accessibility requirements, or any fire suppression or fire protection system;

5. Additions to, alterations of, or rearrangement, relocation, replacement, repair or removal of any portion of a standpipe or sprinkler system, water distribution system, house sewer, private sewer, or drainage system, including leaders, or any soil, waste or vent pipe, or any gas distribution system;
6. Any plumbing work other than the repair or replacement of plumbing fixtures, piping or faucets from the exposed stop valve to the inlet side of a trap;
7. The alteration or repair of a sign for which a permit is required; or
8. Any other work affecting health or the fire or structural safety of the building or the safe use and operation of the service equipment therein.

**§28-105.4.3 Public utility company or public utility corporation.** A permit shall not be required for:

1. The installation or alteration of gas service piping or gas meter piping including meters, valves, regulators, and related equipment, when such work is to be performed and serviced and maintained by utility corporations subject to the jurisdiction of the New York state public service commission;
2. The emergency repair of gas distribution piping when such work is performed by licensed master plumbers or by utility corporations subject to the jurisdiction of the New York state public service commission, in order to alleviate hazardous conditions, provided that a written report describing the details of such repairs shall be filed with the commissioner upon completion of the work.

**§28-105.4.4 Ordinary plumbing work.** The following ordinary plumbing work may be performed without a permit, provided that the licensed plumber performing such work: (i) provides a monthly report listing completed work and work in progress during the preceding month, including the block, lot and address of each job, a description of the work performed or in progress at each address, and the location in each building where the work was performed or is in progress; (ii) pays the fees for such work in accordance with this code; and (iii) submits to the department a certification that the work was performed in accordance with this code and all applicable laws and rules. Ordinary plumbing work shall include:

1. The removal of a domestic plumbing system not connected to a fire suppression or fire protection system, or the removal of a portion of such system.
2. The relocation of up to two plumbing fixtures within the same room to a maximum of 10 feet (3048 mm) distant from the original location, except in health care facilities.
3. The installation, replacement or repair of a food waste grinder (food waste disposal) or secondary back flow preventer and the replacement or repair of a sump pump.
4. The replacement of closet bends.
5. In buildings in occupancy group R2 occupied by fewer than six families or in buildings in occupancy group R3, the replacement of a gas water heater or a gas fired boiler with a capacity of 350,000 BTU or less where the existing appliance gas cock is not moved, provided that the plumber has inspected the chimney and found it to be in good operational condition.
6. The repair or replacement of any non-gas, non-fire suppression piping not longer than 10 feet (3048 mm) inside a building, or connected piping previously repaired or replaced under this provision.
7. The repair or replacement of non-fire suppression branch piping after the riser shutoff valve, including the replacement of fixtures, limited to two bathrooms and one kitchen per building per monthly reporting period.
8. The replacement of flexible gas tubing no greater than 4 feet (1219 mm) in length located downstream of the existing gas cock to an appliance, provided such gas tubing does not penetrate a wall.

**§28-105.4.5 Sign permits.** A sign permit shall not be required where the sign is:

1. Painted directly on the exterior wall surface of a building or on the surface of a fence;
2. A wall sign of not more than six square feet (0.56 m<sup>2</sup>) in area;
3. Erected by employees of a city agency, including traffic and other similar signs;
4. A ground sign offering the sale or rental of the premises on which it is erected, provided the sign does not exceed 12 square feet (1.1 m<sup>2</sup>) in area;
5. Temporary and erected during construction work and related thereto;
6. Temporary for special decorative display use for holidays, public demonstrations, or the promotion of civic, welfare or charitable purposes, except that signs that utilize streets or cross streets shall be subject to the requirements of the department of transportation; or
7. Temporary signs offering the sale or rental of real property when erected on the premises offered for sale or rent.

**§28-105.4.6 Geotechnical investigations.** A permit shall not be required for excavation performed for a geotechnical investigation required by section 1802.4 of the New York city building code provided such excavation does not exceed 10 feet (3048 mm) in length, width, or diameter and is conducted under the supervision of a registered design professional. All excavation activity, including backfilling of excavations, shall comply with all relevant code provisions, including but not limited to sections 1803 and 3304 of the New York city building code.

**§28-105.5 Application for permit.** All applications for permits shall be submitted on forms furnished by the department. Applications shall include all information required by this code, other applicable law or the rules of the department. The applicant shall list any portions of the design that have been approved for deferred submittal in accordance with section 28-104.2.6. The application shall set forth an inspection program for the project. An application for a permit shall be submitted no later than 12 months after the approval of all required construction documents (other than those documents approved for deferred submittal).

**§28-105.5.1 Applicant for permit.** The applicant for a permit shall be the person who performs the work or who retains a subcontractor to do the work.

**Exception:** For permits issued for plumbing work, fire protection and suppression work, and oil burner/boiler work, the applicant for such permits shall be the licensed master plumber, licensed master fire suppression piping contractor, or licensed oil-burning equipment installer, respectively, who performs the work.

**§28-105.6 Fees.** Applications for permits shall be accompanied by the payment of appropriate fees as provided for in article 112.

**§28-105.7 Time limitation of applications.** An application for a permit shall be deemed to have been abandoned 12 months after the date of its submission, unless such application has been diligently prosecuted after rejection in whole or in part, or a permit shall have been issued except that the commissioner may, for reasonable cause, and upon payment of all reinstatement fees as provided for in this code, grant extensions of time for additional 12-month periods.

**§28-105.8 Validity of permit.** The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other law or rule. Permits presuming to give authority to violate or cancel the provisions of this code or other law or rule shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the commissioner from requiring the correction of errors in the construction documents and other data. The commissioner is authorized to prevent any occupancy, use or work in violation of this code, the zoning resolution or other law or rule enforced by the department.

**§28-105.8.1 Duration of permit.** Permits may be issued for a period of up to two years unless otherwise limited by law.

**§28-105.8.2 Signature of commissioner on permit.** Every permit issued by the commissioner shall have his or her signature affixed thereto; but the commissioner may authorize any subordinate to affix such signature, including by the use of electronic means.

**§28-105.9 Expiration.** All permits issued by the commissioner shall expire by limitation and become invalid if the permitted work or use is not commenced within 12 months from the date of issuance of the permit. Subsequent to the 12-month period following the issuance of the initial permit, all permits shall expire if the permitted work is suspended or abandoned for a continuous period of 12 months unless such permits expire earlier pursuant to applicable provisions of this code. The permit shall automatically expire upon the expiration of required insurance or if the applicant holds a license issued by the department upon the expiration or revocation of such license during the term of the permit.

**Exception:** All permits for work in an area of special flood hazard shall comply with section G104 of appendix G of the New York city building code.

**§28-105.9.1 Reinstatement.** The commissioner may at any time reinstate a work permit solely for the purpose of sign-off, including the correction of defects noted in a final inspection as provided in section 28-116.2.4 of this code, or reinstate a work permit within a period of two years from the date of issuance of the original permit. Except in the case of a permit reinstated solely for the purpose of sign-off, the work shall comply with all the requirements of this code and other applicable laws and rules in effect at the time application for reinstatement is made. The applicant for reinstatement shall pay all reinstatement fees as required by article 112.

**§28-105.10 Suspension or revocation of permit.** The commissioner is authorized to suspend or revoke a permit issued under the provisions of this code.

**§28-105.10.1 Notice of proposed revocation.** The commissioner may, on written notice to the permit holder, revoke any permit for failure to comply with the provisions of this code or other applicable laws or rules; or whenever there has been any false statement or any misrepresentation as to a material fact in the application or submittal documents upon the basis of which such approval was issued; or whenever a permit has been issued in error and conditions are such that the permit should not have been issued. Such notice shall inform the permit holder of the reasons for the proposed revocation and that the applicant has the right to present to the commissioner or his or her representative within 10 business days of delivery of the notice by hand or 15 calendar days of the posting of notice by mail, information as to why the permit should not be revoked.

**§28-105.10.2 Immediate suspension in cases of imminent peril.** The commissioner may immediately suspend any permit without prior notice to the permit holder when the commissioner has determined that an imminent peril to life or property exists. The commissioner shall forthwith notify the permit holder that the permit has been suspended and the reasons therefore, that it is proposed to be revoked, and that the permit holder has the right to present to the commissioner or his or her representative within 10 business days of delivery of the notice by hand or 15 calendar days of the posting of notice by mail information as to why the permit should not be revoked.

**§28-105.11 Posting of permit.** The building permit or a copy thereof shall be posted in a conspicuous place at the work site, visible to the public for the duration of the work, or the use and operation of the equipment, or until the expiration of the permit. No such permit shall be posted or displayed at any location other than the location of the premises or equipment for which the permit was issued. Where the permit is exposed to the weather, it shall be laminated or encased in a plastic covering to protect it from the elements.

**Exception:** Where a project information panel is required by section 3301.9.1, of the New York city building code, the permit shall be posted in accordance with such section, and no other permits shall be posted in any location readily visible to the public, except as provided in section 3301.9.5 of the New York city building code.

**§28-105.12 Conditions of permit.** Permits shall be subject to the following conditions:

**§28-105.12.1 Compliance with code.** Permits shall be deemed to incorporate the provisions that the applicant, the owner, their agents, employees, and contractors shall carry out the permitted work in accordance with the provisions of this code and other applicable laws or rules, whether specified or not, except as variations have been legally permitted or authorized.

**§28-105.12.2 Compliance with construction and submittal documents.** All work shall conform to the approved construction and submittal documents, and any approved amendments thereto. Changes and revisions during the course of construction shall conform to the amendment requirements of this code.

**§28-105.12.3 Adherence to lot diagram.** All work shall be strictly located in accordance with the lot diagram approved in accordance with this code and no lot or plot shall be changed, increased or diminished in area from that shown on the approved lot diagram, unless and until a revised diagram showing such changes, accompanied by the necessary statement of the owner or applicant, shall have been submitted to and approved by the commissioner.

**§28-105.12.4 Compliance with safety requirements.** All work shall be conducted in accordance with and subject to the safety requirements of this code and other applicable laws or rules, including any order or requirement of the commissioner that the building or structure under construction or alteration be vacated, in whole or in part, during the progress of the work and until the issuance of a certificate of occupancy. Adjoining lots and properties shall be protected in accordance with this code.

**§28-105.12.5 Compliance with noise control code required.** All work shall be performed in compliance with the provisions of the New York city noise control code as set forth in chapter 2 of title 24 of the administrative code. Failure to comply with sections 24-222 and 24-223 of the administrative code shall be a violation of this code.

**§28-105.12.6 Deferred submittals.** Where permits are issued subject to deferred submittal of portions of the design as provided for in section 28-104.2.6, the deferred submittal items shall not be installed until the construction and submittal documents for such portions have been approved by the department and, where applicable, new or amended permits have been issued.

**§28-105.12.7 Insurance.** Where workers compensation, employee disability or liability insurance is required by law or department rule, the applicant for the work permit shall obtain and include proof of such insurance with the work permit application. The permit shall expire by operation of law if the insurance upon which the permit was conditioned lapses, expires or is cancelled, unless the permit holder files proof of alternate insurance before such event.

**§28-105.12.7.1 Insurance coverage for adjacent properties.** A person who obtains a permit for construction or demolition operations shall, at such person's own expense, procure and maintain for the duration of the operations, insurance of a kind and in an amount specified by rule of the department, to insure any and all adjacent property owners and their lawful occupants fully for all risks of loss, damage to property or injury to or death of persons, arising out of or in connection with the performance of the proposed work. Such person shall submit proof of insurance to the department when applying for a permit for construction or demolition work.

**§28-105.12.8 Site safety plan.** Where required by this code or by the department, applications shall include a site safety plan approved in accordance with the New York city building code. All work shall adhere to the site safety plan.

## ARTICLE 106 ASBESTOS

**§28-106.1 Asbestos certification required.** The commissioner shall not issue a permit for the demolition or alteration of a

building constructed pursuant to plans submitted for approval on or before April 1, 1987, unless the applicant submits such certification relating to asbestos as may be required by the rules of the New York city department of environmental protection.

**\*§28-106.1.1 Full demolition permit.** The commissioner shall not issue a full demolition permit unless the owner of the building provides certification in a form and manner to be provided in the rules of the department of environmental protection that (i) the building is free of asbestos containing material, or (ii) the commissioner of environmental protection, has issued a variance from this requirement in accordance with subdivision (m) of section 24-136 of the administrative code and the rules of the department of environmental protection, subject to the requirement that demolition work will be performed only in parts of the building that are certified free of asbestos containing material. The full demolition permit shall be subject to such additional conditions as the department of buildings may require of the permittee based on the size and complexity of the demolition work.

**Exception:** This section 28-106.1.1 shall not apply to full demolition performed as emergency work pursuant to article 215 of chapter 2 of this title where the emergency warrants immediate commencement of the work or full demolition with asbestos in place authorized pursuant to 12 NYCRR 56-11.5.

*\*Section 28-106.1.1 was amended by [Local Law 38 of 2015](#). This law has an effective date of May 6, 2016.*

**\*§28-106.1.2 Alteration permit for the removal of one or more stories.** The commissioner shall not issue an alteration permit for the removal of one or more stories of a building unless the owner of the building provides certification in a form and manner to be provided in the rules of the department of environmental protection that (i) the stories to be removed are free of asbestos containing material and that no abatement activities will be performed anywhere in the building concurrently with the removal work authorized by such permit or (ii) the commissioner of environmental protection has issued a variance from these requirements in accordance with subdivision (m) of section 24-136 of the administrative code and the rules of the department of environmental protection, subject to the requirement that work authorized by the alteration permit will be performed only in parts of the building that are certified free of asbestos containing material. The alteration permit shall be subject to such additional conditions as the department of buildings may require of the permittee based on the size and complexity of the work.

**Exception:** This section 28-106.1.2 shall not apply to removal of one or more stories performed as emergency work pursuant to article 215 of chapter 2 of this title where the emergency warrants immediate commencement of the work.

*\*Section 28-106.1.2 was amended by [Local Law 38 of 2015](#). This law has an effective date of May 6, 2016.*

**§28-106.2 Construction and maintenance of asbestos containment structures and other temporary structures or work required for asbestos abatement activities.** Notwithstanding any other provision of this code, the construction and maintenance of asbestos containment structures, decontamination system enclosures and other temporary structures or work performed in the course of and only for the purpose of asbestos abatement activities shall comply with this section and the rules of the New York city department of environmental protection relating to such temporary structures and work and with article 30 of the New York state labor law and rules adopted pursuant to such article.

**§28-106.2.1 Materials.** The rules of the New York city department of environmental protection relating to materials used in the construction of temporary structures for asbestos abatement activities shall contain a provision requiring such structures to be non-combustible or flame resistant in compliance with reference standard NFPA 255-06 or NFPA 701-99, as such standards may be modified by local law or by the department of buildings pursuant to applicable rules.

**§28-106.3 Permit exemption.** Except as otherwise provided by rule, work performed in the course of and only for the purpose of an asbestos project that is required to be permitted pursuant to section 24-138 of the administrative code shall be exempt from the permit requirements of this code.

*\*Section 28-106.3 was amended by [Local Law 38 of 2015](#). This law has an effective date of May 6, 2016.*

**§28-106.4 Definitions.** For the purposes of this article, the terms "asbestos" and "asbestos project" shall have the meanings as are ascribed in section 24-136 of the administrative code.

*\*Section 28-106.4 was amended by [Local Law 38 of 2015](#). This law has an effective date of May 6, 2016.*

## ARTICLE 107 ALTERATION OR DEMOLITION OF SINGLE ROOM OCCUPANCY MULTIPLE DWELLINGS

**§28-107.1 General.** The commissioner shall not approve construction documents, nor issue an initial or reinstated permit in connection therewith, for the alteration or demolition of a single room occupancy multiple dwelling except as set forth in this article. Applications for post approval amendments to construction documents are subject to this article where the application proposes a change within a covered category of work as set forth in section 28-107.3.

**§28-107.2 Definitions.** The following words and terms shall, for the purposes of this article and elsewhere in the code, have the meanings shown herein.

**CLASS A MULTIPLE DWELLING, CLASS B MULTIPLE DWELLING, FURNISHED ROOM HOUSE, ROOMING UNIT AND SINGLE ROOM OCCUPANCY.** Shall have the meanings set forth in section 27-2004 of the New York city housing maintenance code.

**SINGLE ROOM OCCUPANCY MULTIPLE DWELLING.** A single room occupancy multiple dwelling means:

1. A “class A multiple dwelling” used in whole or part as a “rooming house” or “furnished room house,” or for “single room occupancy” pursuant to section 248 of the New York state multiple dwelling law;
2. A “class A multiple dwelling” containing “rooming units”; or
3. A “class B multiple dwelling.”

**Exception:** The term single room occupancy multiple dwelling shall not include:

1. College or school dormitories;
2. Clubhouses;
3. Luxury hotels, as such term is defined by the commissioner of housing preservation and development; or
4. Residences whose occupancy is restricted to an institutional use such as housing intended for use by the employees of a single company or institution;
5. City-owned multiple dwellings; or
6. Any multiple dwelling, other than a lodging house, containing fewer than nine sleeping rooms, rooming units, single room occupancy units, or hotel units unless the total number of such units is more than fifty percent of the total number of dwelling units in such multiple dwelling; or
7. Any multiple dwelling that:
  - 7.1. Is the subject of a program approved by the commissioner of housing preservation and development and related to the rehabilitation or preservation of a single room occupancy multiple dwelling or the provision of housing for persons of low or moderate income, other than a program consisting solely of real property tax abatement or tax exemption; and
  - 7.2. Has been exempted from the provisions of this article by the commissioner of housing preservation and development.

**§28-107.3 Covered categories of work.** Applications for the approval of construction documents for the following categories of work are covered by this article:

1. Demolition of a single room occupancy multiple dwelling;
2. Alteration of a single room occupancy multiple dwelling to a class A multiple dwelling to be used in whole or in part for other than single room occupancy purposes;
3. Alteration of a single room occupancy multiple dwelling resulting in the removal or addition of kitchen or bathroom facilities; and
4. Such other types of alteration work to a single room occupancy multiple dwelling as shall be prescribed by rule of the commissioner of housing preservation and development, in consultation with the commissioner.

**Exceptions:**

1. Work solely for the purpose of either (i) making the public areas of a multiple dwelling accessible to persons with disabilities without altering the configuration of any dwelling unit or rooming unit or (ii) making the interior or the entrance to a dwelling unit or a rooming unit accessible to persons with disabilities shall not be covered by this article.
2. Repairs, demolition or any other work performed by a city agency or by a contractor pursuant to a contract with a city agency shall not be covered by this article.

**§28-107.4 Required submittal documents.** The commissioner shall not approve any construction documents, nor issue an initial or reinstated permit in connection therewith, for a single room occupancy multiple dwelling for the covered categories of work unless the applicant provides:

1. A sworn affidavit by or on behalf of all the owners, as the term owner is defined in section 27-2004 of the New York city housing maintenance code, of such multiple dwelling that there will be no harassment of the lawful occupants of such multiple dwelling by or on behalf of such owners during the construction period;
2. A tenant protection plan as provided for in this code; and

3. One of the following documents from the commissioner of housing preservation and development:

- 3.1. A current certification that there has been no harassment of the lawful occupants of such multiple dwelling within the 36 month period prior to submission of an application for such certification to the department of housing preservation and development, provided, however, that such certification shall except any portion of such 36 month period during which title was vested in the city; or
- 3.2. A waiver of such certification.

**§28-107.5 Filing process.** Applications for a certification of no harassment shall be made pursuant to section 27-2093 of the housing maintenance code.

**§28-107.6 Time period for acceptance or rejection.** The time period in which the commissioner is required to approve or reject an application for construction document approval or resubmission thereof pursuant to this code shall commence from the date that the commissioner receives either the certification or waiver pursuant to this article.

**§28-107.7 Denial of certification.** Where the commissioner of housing preservation and development denies the certification required by this article, the commissioner shall reject the application for construction document approval.

**§28-107.8 Request for stop-work or rescission.** The commissioner shall be empowered to issue a stop-work notice or order with respect to an alteration or demolition permit and/or to rescind approval of construction documents at the request of the commissioner of housing preservation and development pursuant to section 27-2093 of the New York city housing maintenance code.

**§28-107.9 Effect of denial or rescission.** Where the commissioner rejects or rescinds the approval of construction documents pursuant to this article, no further application for the covered categories of work shall be considered by the commissioner for a period of 36 months following the date of the denial of the certification of no harassment by the commissioner of housing preservation and development or the date of the rescission of such certification of no harassment by such commissioner.

## **ARTICLE 108 PAVEMENT PLAN**

**§28-108.1 General.** The commissioner shall not issue a permit for the erection of a new building or for alterations that will require the issuance of a new or amended certificate of occupancy without a statement that no certificate of occupancy shall be issued unless the sidewalk in front of or abutting such building, including but not limited to the intersection quadrants for corner properties, shall have been paved or repaired by the owner, at his or her own cost, in the manner, of the materials, and in accordance with the standard specifications prescribed by the New York city department of transportation pursuant to sections 19-113 and 19-115 of the administrative code.

### **Exceptions:**

1. Application for the erection of an accessory building appurtenant to an existing one- or two-family dwelling.
2. Where the commissioner determines that a sidewalk is not required, provided that such determination shall not affect the obligations of the owner under subdivision a of section 19-152 of the administrative code, nor relieve the owner of any such obligations, nor impair or diminish the rights of the city or its agencies to enforce such obligations.
3. Where the extent of the change in use or occupancy or the cost of the alteration does not exceed a threshold established pursuant to rule of the commissioner.

**§28-108.2 Pavement plan required.** Construction documents shall include a pavement plan processed and approved under guidelines established by the department. The pavement plan shall include documentation sufficient to show compliance with the standards and specifications of the New York city department of transportation pursuant to sections 19-113 and 19-115 of the administrative code.

**Exception:** No pavement plan shall be required with respect to an alteration application for a building where the applicant certifies that there is a sidewalk in existence in front of or abutting such building, including but not limited to the intersection quadrants for corner properties, complying with the specifications of the New York city department of transportation, and that the nature of such alteration work will neither remove such existing sidewalk nor cause damage to such existing sidewalk such that the damage could not be corrected as minor repairs prior to issuance of the certificate of occupancy.

**§28-108.3 Improvement of streets.** The commissioner shall insure that streets are suitably improved in accordance with the standards and specifications of the department of transportation as required by subdivision two of section thirty-six of the general city law and shall otherwise carry out the provisions of such subdivision.

## **ARTICLE 109 FIRE PROTECTION PLAN**

**§28-109.1 Fire protection plan required for covered buildings.** New building and alteration applications for covered buildings as set forth in section 28-109.2 shall include a fire protection plan prepared by or under the supervision of a registered design professional who shall professionally certify such plan. Such plan shall be approved by the department and the fire department prior to issuance of a certificate of occupancy, a temporary certificate of occupancy or a letter of completion, as applicable.

**Exception:** No fire protection plan shall be required for an alteration that meets all three of the following requirements:

1. The alteration does not involve a change of use or occupancy;
2. The alteration does not exceed one million dollars; and
3. The alteration does not create an inconsistency with a previously approved fire protection plan.

**§28-109.2 Covered buildings.** Covered buildings include:

1. High-rise buildings as described in section 403 of the New York city building code.
2. Occupancy groups B, E, F, H, M, or S occupying two or more stories with over 20,000 gross square feet (1858 m<sup>2</sup>) of floor area per floor, or occupying two or more stories in a building with a total floor area exceeding 50,000 gross square feet (4645 m<sup>2</sup>).
3. Any building containing an assembly occupancy having an occupant load of 300 or more persons.
4. Occupancy group I or R- 1 occupying two or more stories and containing sleeping accommodations for 30 or more persons.
5. Occupancy group R-2 occupancies containing 30 or more dwelling units in a building where over 10,000 gross square feet (929 m<sup>2</sup>) of floor area is occupied by occupancy group A, E, M, or I.
6. Covered mall buildings and open mall buildings designed pursuant to section 402 of the New York city building code.

**§28-109.3 Scope.** The plan shall include the following information, where applicable:

1. A description of the building including: address; block and lot numbers; number of stories; height in feet; occupancy group; construction classification; occupancy load and department of buildings application number;
2. All floors, exits, doors, corridors, and partitions serving as fire barriers, fire partitions, fire walls; locations and ratings of required enclosures and fire areas; stairs with pressurization; roof access; exit discharges; and locations of any required frontage space; and
3. In narrative form, a description of safety systems and features, including:
  - 3.1. Communications systems.
  - 3.2. Alarm systems.
  - 3.3. Smoke and carbon monoxide detection equipment.
  - 3.4. Location of fire command station.
  - 3.5. Elevator recall.
  - 3.6. Emergency lighting and power.
  - 3.7. Standpipes.
  - 3.8. Sprinklers.
  - 3.9. Emergency and standby power systems.
  - 3.10. Mechanical ventilation and air conditioning.
  - 3.11. Smoke control systems and equipment.
  - 3.12. Furnishings types and materials.
  - 3.13. Places of assembly.
  - 3.14. Fire department access.
  - 3.15. Photoluminescent pathway markings.
  - 3.16. Other safety related systems, required and voluntary, to be installed.

## **ARTICLE 110 SITE SAFETY PLAN**

**§28-110.1 Site safety plan.** Where a site safety plan is required by chapter 33 of the New York city building code, such plan shall include the following:

1. Location of all construction fences around work site;
2. Location of all gates in construction fences;
3. Location of standard guardrails around excavations, when required;
4. Horizontal and vertical netting program, including details of the initial installation, schedule of horizontal jumps and vertical installations, and designated crane and derrick lifting areas where horizontal netting is omitted. The program shall include as an attachment any department approval obtained regarding required safety netting during construction or demolition operations; the revised site safety plan shall be approved;
5. Location of all sidewalk sheds, including appropriate department application numbers and department of transportation permit numbers and expiration dates;
6. Location of all temporary walkways, including appropriate department application numbers and department of transportation permit numbers and expiration dates;
7. Location of foot bridges and motor vehicle ramps, including appropriate department application numbers and department of transportation permit numbers and expiration dates;
8. Protection of side of excavation, when required, including appropriate department application numbers and department of transportation permit numbers and expiration dates;
9. Location of all street and sidewalk closing(s), including appropriate department application numbers and department of transportation permit numbers and expiration dates;
10. Approximate location of material and personnel hoist(s) and loading areas, including appropriate department application numbers and department of transportation permit numbers and expiration dates;
11. Approximate location of all crane and derrick loading areas;
12. Location of all surrounding buildings, indicating occupancy, height and type of any required roof protection;
13. Location of all standpipe system and siamese hose connections;
14. Location of all temporary elevators for fire department use when building is above 75 feet (22 860 mm) in height;
15. Location of all exterior contractors' sheds;
16. All required safety netting and scaffolding;
17. Widths of all sidewalks and roadways; all traffic information; all exits from the work site;
18. A copy of the proposed site safety manager or site safety coordinator's certificate, as applicable, including the certificate for any alternate site safety manager or site safety coordinator;
19. Such features requiring special sequencing in order to maintain safe conditions with a written description of those sequences;
20. A statement that prior to performing any work on the project all workers have successfully completed the training required by section 3310.10.2 of the New York city building code; and
21. A statement that all workers employed on the construction site will receive a site-specific orientation program required by section 3310.10.1 of the New York city building code.

**§28-110.2 Phased site safety plans.** Multiple layouts of the site safety features enumerated in section 28-110.1 may be submitted at any time during construction operations to show phased site safety designs consistent with the phase of anticipated work.

## ARTICLE 111 TEMPORARY STRUCTURES AND USES

**§28-111.1 General.** The erection of certain temporary structures and temporary uses may be authorized as set forth in sections 28-111.1.1 and 28-111.1.2.

**§28-111.1.1 Permits for the erection and use of temporary structures.** The commissioner is authorized to issue a permit for the erection of temporary structures including but not limited to tents, grandstands, platforms, reviewing stands, outdoor bandstands, stages and similar miscellaneous structures and equipment, and for the temporary use of such structures. Such permits shall be limited as to time of service or use, but in no event shall be permitted for more than 90 days. The commissioner may grant extensions for demonstrated cause.

**Exception:** No permit shall be required for:

1. The erection and use of temporary tents of less than 400 gross square feet (37 m<sup>2</sup>) for not more than 30 days.
2. The erection and use of temporary platforms, reviewing stands, outdoor bandstands and similar miscellaneous structures

that cover an area less than 120 square feet (11.16 m<sup>2</sup>), including connecting areas or spaces with a common means of egress or entrance, for not more than 30 days.

**§28-111.1.2 Letters authorizing temporary uses.** The commissioner is authorized to issue a letter authorizing the temporary use of outdoor or indoor spaces provided the space shall be occupied in a manner that will not endanger public safety, health, or welfare. Such letters authorizing the temporary use shall be limited as to time of service or use, but shall not be permitted for more than 90 days. The commissioner may grant extensions for demonstrated cause.

**§28-111.2 Conformance.** Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation and sanitary requirements of this code as necessary to ensure the public health, safety and general welfare.

**§28-111.3 Termination of approval.** The commissioner is authorized to terminate such permit or letter of authorization and to order the temporary structure or use to be discontinued.

**§28-111.4 Application processing.** Application for such structures and uses shall be submitted to the department no later than 15 business days prior to the construction of the temporary structure or the commencement of the temporary use.

**§28-111.5 Fees.** Applications for such permits shall be accompanied by the applicable fees in accordance with article 112. Fees for subsequent requests for renewals shall be paid upon approval of such requests.

**§28-111.6 Place of assembly.** Notwithstanding any inconsistent provision of this article the use of a temporary structure or the temporary use of space as a place of assembly shall require a temporary place of assembly certificate of operation issued pursuant to section 28-117.2.

## **ARTICLE 112 FEES**

**§28-112.1 Payment of fees.** A permit, inspection, or other service or privilege as regulated in this code shall not be valid until the fees prescribed herein or in rules have been paid, nor shall a renewal of a permit or other service or privilege or an amendment to a permit be released until the fee has been paid. In addition, an approval required to be reissued due to a change in product name, company name and/or address, contact information or principals, shall not be reissued until a reissuance fee, if any, has been paid. The department shall adopt such rules and shall prescribe such forms as may be necessary to carry out the provisions of this article.

### **Exceptions:**

1. A permit, inspection or other service or privilege as regulated in this code shall not be subject to this provision if the current deed holder of the building or property affected is a corporation or association organized and operated exclusively for religious, charitable or educational purposes, or for one or more such purposes, no part of the earnings of which inures to the benefit of any private shareholder or individual, and provided that the property affected is to be used exclusively by such corporation or association for one or more of such purposes.
2. A permit, inspection or other service or privilege as regulated in this code shall not be subject to this provision if the work proposed is emergency work performed by a city agency or by a contractor pursuant to a contract with a city agency.

**§28-112.2 Schedule of permit fees.** Permits for new buildings, structures, mechanical, and plumbing systems or alterations requiring a permit shall be accompanied by a fee for each permit in accordance with the fee schedule of Table 28-112.2. Fifty percent of the total fee for the work permit, but not less than one hundred dollars, or the total fee for the work permit where such fee is less than one hundred dollars, shall be paid and shall accompany the first application for the approval of construction documents; and the whole or remainder of the total fee shall be paid before the work permit may be issued. The commissioner may require reasonable substantiation of any statement or other form that may be required by the department.



PERMIT TYPE	FILING FEE	RENEWAL FEE	COMMENTS
<p>New building work permit: All other new buildings fewer than 7 stories and less than 100,000 square feet, where any existing building elements are to be retained in place as part of the new building, pursuant to section 28-101.4.5.</p>	<p>Minimum Filing Fee - \$280  Minimum filing fee for the first three thousand dollars, or fraction thereof, of the cost of alteration; plus \$10.30 for each one thousand dollars, or fraction thereof, of the alteration cost in excess of three thousand dollars.</p> <p>The rates and fees set forth above shall be subject to increases as provided by department rules.</p>	<p>\$100</p>	<p>For the purposes of this fee schedule item, "building elements" means any portion of an existing building or structure, including but not limited to party walls foundations, footings, piles and slabs on grade.</p>
<p>New building work permit: All other new buildings 7 stories or more or 100,000 square feet or more, classified in occupancy group R-2, where at least 50 percent of the occupancy units are affordable to households whose income is less than 165 percent of the area median income for New York city, as determined by the United States department of housing and urban development or successor agency, which are financed entirely or in part by a grant or loan from the city of New York or the New York city housing and development corporation, and where no existing building elements are to be retained in place as part of the new building.</p> <ul style="list-style-type: none"> <li>Subsequent applications related to initial new building work permit application, filed prior to the first temporary certificate of occupancy (TCO), or the final certificate of occupancy if no TCO is issued</li> </ul>	<p>\$0.26 for each square foot, or fraction thereof, of the total floor area of the new building, but not less than \$100 for each structure,</p> <p>The rates and fees set forth above shall be subject to increases as provided by department rules.</p> <p>\$100</p>	<p>\$100</p>	<p>For the purposes of this fee schedule item, "building elements" means any portion of an existing building or structure, including but not limited to party walls foundations, footings, piles and slabs on grade.</p>
<p>New building work permit: All other new buildings 7 stories or more 100,000 square feet or more, classified in occupancy group R-2, where at least 50 percent of the occupancy units are affordable to households whose income is less than 165 percent of the area median income for New York city, as determined by the United States department or successor agency, which are financed entirely or in part by a grant or loan from the city of New York or the New York city housing and development corporation, and where any existing building elements are to be retained in place as part of the new building, pursuant to section 28-101.4.5.</p>	<p>Minimum Filing Fee - \$280  Minimum filing fee for the first \$3,000 or fraction thereof, of the cost of alteration; plus \$10.30 for each one thousand dollars, or fraction thereof, of the alteration cost in excess of three thousand dollars.</p> <p>The rates and fees set forth above shall be subject to increases as provided by department rules.</p>	<p>\$100</p>	<p>For the purposes of this fee schedule item, "building elements" means any portion of an existing building or structure, including but not limited to party walls foundations, footings, piles and slabs on grade.</p>
<p>New building work permit: All other new buildings 7 stories or more, or 100,000 square feet or more, where no existing building elements are to be retained in place as part of the new building.</p>	<p>\$0.45 for each square foot, or fraction thereof, of the total floor area of the new building, but not less than \$290 for each structure.</p>	<p>\$100</p>	<p>For the purposes of this fee schedule item, "building elements" means any portion of an existing building or</p>

PERMIT TYPE	FILING FEE	RENEWAL FEE	COMMENTS
<ul style="list-style-type: none"> <li>Subsequent applications related to initial new building work permit application, filed prior to the first temporary certificate of occupancy (TCO), or the final certificate of occupancy if no TCO is issued</li> </ul>	<p>The rates and fees set forth above shall be subject to increases as provided by department rules.</p> <p>\$100</p>	<p>\$100</p>	<p>structure, including but not limited to party walls foundations, footings, piles and slabs on grade.</p>
<p>New building work permit: All other new buildings 7 stories or more, or 100,000 square feet or more, where any existing building elements are to be retained in place as part of the new building, pursuant to section 28-101.4.5.</p>	<p>Minimum Filing Fee - \$290</p> <p>Minimum filing fee for the first three thousand, or fraction thereof, of the cost of alteration; plus \$17.75 for each one thousand dollars, or fraction thereof, of the alteration cost in excess of three thousand dollars.</p> <p>The rates and fees set forth above shall be subject to increases as provided by department rules.</p>	<p>\$100</p>	<p>For the purposes of this fee schedule item, "building elements" means any portion of an existing building or structure, including but not limited to party walls foundations, footings, piles and slabs on grade.</p>
<b><i>Alterations</i></b>			
<p>Alteration work permit: One-, two- or three-family dwelling</p> <ul style="list-style-type: none"> <li>Alteration Type 1</li> <li>Alteration Type 2</li> <li>Alteration Type 3</li> <li>Limited Alteration Application</li> </ul>	<p>Minimum Filing Fee - \$170</p> <p>Minimum Filing Fee - \$130</p> <p>Minimum Filing Fee - \$130</p> <p>Minimum Filing Fee - \$130</p> <p>Minimum filing fee for the first five thousand dollars, or fraction thereof, of the cost of alteration; plus \$2.60 for each one thousand dollars, or fraction thereof, of cost of alterations in excess of five thousand dollars.</p> <p>The rates and fees set forth above shall be subject to increases as provided by department rules.</p>	<p>\$100</p>	

PERMIT TYPE	FILING FEE	RENEWAL FEE	COMMENTS
<p>Alteration work permit: Alterations in all other buildings and structures fewer than 7 stories and less than 100,000 square feet, including but not limited to aerial towers and masts, tank structures, fire escapes, etc., which are unoccupied and not easily valued by area.</p> <ul style="list-style-type: none"> <li>• Alteration Type 1</li> <li>• Alteration Type 2</li> <li>• Alteration Type 3</li> <li>• Limited Alteration Application</li> </ul>	<p>Minimum Filing Fee - \$280  Minimum Filing Fee - \$225  Minimum Filing Fee - \$195  Minimum Filing Fee - \$195</p> <p>Minimum filing fee for the first three thousand dollars, or fraction thereof, of the cost of alteration; plus \$10.30 for each one thousand dollars, or fraction thereof, of the alteration cost in excess of three thousand dollars.</p> <p>The rates and fees set forth above shall be subject to increases as provided by department rules.</p>	<p>\$100</p>	<p>Such alterations work shall include:</p> <ul style="list-style-type: none"> <li>• Applications related to new building work permit application, filed after the first temporary certificate of occupancy (TCO), or the final certificate of occupancy if no TCO is issued.</li> <li>• Installation or alteration of elevators, escalators, amusement devices and other devices regulated under this code, except those filed under a new building application.</li> </ul>
<p>Alteration work permit: Alterations in all other buildings and structures 7 stories or more, or 100,000 square feet or more, classified in occupancy group R-2, which are unoccupied and not easily valued by area, where at least 50 percent of the occupancy units are affordable to households whose income is less than 165 percent of the area median income for New York city, as determined by the United States department of housing and urban development or successor agency, and which are financed entirely or in part by a grant or loan from the city of New York or the New York city housing and development corporation.</p> <ul style="list-style-type: none"> <li>• Alteration Type 1</li> <li>• Alteration Type 2</li> <li>• Alteration Type 3</li> <li>• Limited Alteration Application</li> </ul>	<p>Minimum Filing Fee - \$280  Minimum Filing Fee - \$225  Minimum Filing Fee - \$195  Minimum Filing Fee - \$195</p> <p>Minimum filing fee for the first three thousand dollars, or fraction thereof, of the cost of alteration; plus \$10.30 for each one thousand dollars, or fraction thereof, of the alteration cost in excess of three thousand dollars.</p>	<p>\$100</p>	<p>Such alterations work shall include:</p> <ul style="list-style-type: none"> <li>• Applications related to new building work permit application, filed after the first temporary certificate of occupancy (TCO), or the final certificate of occupancy if no TCO is issued.</li> <li>• Installation or alteration of elevators, escalators, amusement devices and other devices regulated under this code, except those filed under a new building application.</li> </ul>

PERMIT TYPE	FILING FEE	RENEWAL FEE	COMMENTS
	The rates and fees set forth above shall be subject to increases as provided by department rules.		
<p>Alteration work permit: Alterations in all other buildings and structures 7 stories or more, or 100,000 square feet or more, including but not limited to aerial towers and masts, tank structures, fire escapes, etc., which are unoccupied and not easily valued by area.</p> <ul style="list-style-type: none"> <li>• Alteration Type 1</li> <li>• Subsequent or related filings</li> </ul>	<p>Minimum Filing Fee - \$290 Minimum Filing Fee - \$290</p> <p>Minimum filing fee for the first three thousand dollars, or fraction thereof, of the cost of alteration; plus \$17.75 for each one thousand dollars, or fraction thereof, of the alteration cost in excess of three thousand dollars.</p> <p>The rates and fees set forth above shall be subject to increases as provided by department rules.</p>	\$100	<p>Such alterations work shall include:</p> <ul style="list-style-type: none"> <li>• Applications related to new building work permit application, filed after the first temporary certificate of occupancy (TCO), or the final certificate of occupancy if no TCO is issued.</li> <li>• Installation or alteration of elevators, escalators, amusement devices regulated under this code, except those filed under a new building application.</li> </ul>
<p>Alteration work permit: Alterations in all other buildings and structures 7 stories or more, or 100,000 square feet or more, including but not limited to aerial towers and masts, tank structures, fire escapes, etc., which are unoccupied and not easily valued by area.</p> <ul style="list-style-type: none"> <li>• Alteration Type 2</li> <li>• Alteration Type 3</li> <li>• Limited Alteration Application</li> </ul>	<p>Minimum Filing Fee - \$225 Minimum Filing Fee - \$195 Minimum Filing Fee - \$195</p> <p>Minimum filing fee for the first three thousand dollars, or fraction thereof, of the cost of alteration; plus \$10.30 for each one thousand dollars, or fraction thereof, of the alteration cost in excess of three thousand dollars.</p> <p>The rates and fees set forth above shall be subject to increases as provided by department rules.</p>	\$100	<p>Such alterations work shall include:</p> <ul style="list-style-type: none"> <li>• Applications related to new building work permit application, filed after the first temporary certificate of occupancy (TCO), or the final certificate of occupancy if no TCO is issued.</li> <li>• Installation or alteration of elevators, escalators, amusement devices and other devices regulated under this code, except those filed under a new building application.</li> </ul>



PERMIT TYPE	FILING FEE	RENEWAL FEE	COMMENTS
more than thirty-one feet above roof level.	fraction thereof, but not less than \$100.		shall be treated as a separate sign.
Permit to erect, install or alter sign: Roof sign without a tight, closed or solid surface, extending to a height over thirty-one feet above roof level.	Filing fee calculated as for respective building alteration; plus \$25 for each one hundred square feet of area, or fraction thereof, but not less than \$135.	\$100	Each face of any sign, when fronting on different streets, shall be treated as a separate sign.
Permit to erect, install or alter sign: Illuminated sign projecting beyond street line having thirty square feet or less on one side.	Filing fee calculated as for respective building alteration.	\$100	Illuminated sign is subject to annual use fee: \$45.
Permit to erect, install or alter sign: Illuminated sign projecting beyond street line having more than thirty square feet but no more than fifty square feet on one side.	Filing fee calculated as for respective building alteration.	\$100	Illuminated sign is subject to annual use fee: \$70.
Permit to erect, install or alter sign: Illuminated sign projecting beyond street line and having more than fifty square feet on one side.	Filing fee calculated as for respective building alteration.	\$100	Illuminated sign is subject to annual use fee: \$.075 for each square foot or part thereof annually, but not less than \$100.
Maintenance permit for outdoor signs.	As provided by department rules.		
<b><i>Temporary Structures</i></b>			
Sidewalk shed	\$160 for the first twenty-five feet or fraction thereof in the length of the shed; plus \$10 for each additional twenty-five feet or fraction thereof.	\$100	
Scaffold	\$160	\$100	
Construction Fence	\$160		
Permit for temporary shed, railing, footbridge, catch platform, building sidewalk shanty, over-the-sidewalk chute.	\$160 for each permit.	\$100	
Permit for temporary structure other than those temporary structures listed above, including but not limited to tents, grandstands, stages.	For the initial 30 days of permit duration: \$130 for the first one thousand square feet or fraction thereof; plus \$0.10 for each square foot or fraction thereof in excess of one thousand square feet; \$100 for each additional 30 day period of permit duration.	\$100 for each additional 30 days.	
<b><i>Reinstatement of Applications/Permits</i></b>			
Application/permit reinstatement fees: <ul style="list-style-type: none"> <li>• Prior to first permit.</li> <li>• Following first permit issuance but prior to commencing work.</li> <li>• Following first permit, with work partially complete.</li> </ul>	<p>Full fee at the rate in effect on the date of reinstatement.</p> <p>Full fee at the rate in effect on the date of reinstatement.</p> <p>Based upon the full fee at the rate in effect on the date of reinstatement, the percentage of the fee equal to the percentage of work remaining as determined by the department inspector, plus the renewal fee.</p>		

*\*Table 28-112.2 was amended by [Local Law 56 of 2016](#). This law has an effective date of June 9, 2016.*

**§28-112.3 Building permit valuations.** An estimate of the cost of construction shall be provided at the time of application for construction document approval or, where no construction documents are required, at the time of application for a permit. Such costs shall include the total value of work proposed, including but not limited to materials, equipment and labor, with reasonable allowances for profit and overhead. If, in the opinion of the department, the cost is underestimated, the application shall be denied, unless the applicant can show detailed estimates to meet the approval of the department. A final affidavit with the total actual cost of construction, as built or installed, shall be submitted prior to signoff. The initial, amended and final building permit valuation shall be set by the department.

**§28-112.4 Work commencing before permit issuance.** Any person who commences any work before obtaining the necessary permits shall be subject to a penalty as specified in this code that shall be in addition to the required permit fees.

**§28-112.5 Related fees.** The payment of the fee for the construction, alteration, removal or demolition for work done in connection or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

**§28-112.6 Refunds and rebates.** Upon application to the comptroller of the city of New York, and upon verification of claim by the commissioner, refunds or rebates of partial or full fees shall be provided as set forth in sections 28-112.6.1 through 28-112.6.3.

**§28-112.6.1 Withdrawal of work permit applications.** In the event that an owner withdraws an application, the owner may obtain a refund of all or a portion of the fee paid as follows:

1. If an application for construction document approval is withdrawn prior to the commencement of examination of the application all but forty dollars of the deposit fee paid shall be refunded.
2. If an application for construction document approval is withdrawn during the progress of examination of the application, the comptroller shall retain a percentage of the deposit fee paid, which the department shall certify is the equivalent percentage of the examination completed, but not less than one hundred dollars. The remainder of the deposit fee shall be refunded to the owner.
3. If an application for construction document approval is withdrawn after examination of construction documents and/or construction document approval and before issuance of permit, there shall be refunded by the comptroller 50 percent of the total computed fee for the permit, except that not less than one hundred dollars shall be retained by the comptroller.

**§28-112.6.2 Withdrawal of cranes and derricks applications.** If the applicant withdraws his or her application for a certificate of approval for a power-operated crane, derrick or cableway, such applicant may obtain a refund of a portion of the fees as follows:

1. If the application is withdrawn prior to the commencement of examination by the department, the entire fee shall be refunded except one hundred dollars.
2. If the application is withdrawn after the examination has commenced, the comptroller shall retain a percentage of the fee paid, which the department shall certify is the equivalent percentage of the examination performed, but not less than one hundred dollars. The remainder of the fee shall be refunded to the applicant.
3. If the application is withdrawn after the department has performed its examination, whether or not the application has been approved no part of the fee shall be returned to the applicant.

**§28-112.6.3 Incentive rebates.** With respect to the rebates under this section 28-112.6, the commissioner may, at his or her discretion, issue a rebate of application fees as follows and as established by rule.

**§28-112.6.3.1 Renewable energy rebates.** Owners who demonstrate the production on a zoning lot of five percent or more of the annual energy consumption on the zoning lot through renewable energy sources may receive a fee rebate as established by rule.

**§28-112.6.3.2 Rebate for energy use reduction.** Owners who demonstrate a reduction in energy use from that allowed at the time of permit by the New York state energy conservation construction code as a result of the permitted work may receive a fee rebate as established by rule.

**§28-112.6.3.3 Rebate for water conservation systems.** Owners who demonstrate conservation of water taken from the city supply by providing evidence of achieving the water-recycling discount authorized by the New York city water board may receive a fee rebate as established by rule.

**§28-112.6.3.4 Rebate for redevelopment, remediation and reuse of contaminated properties known as brownfields.** Owners who demonstrate that their site was contaminated and has been certified as remediated by the United States environmental protection agency or the New York state department of environmental conservation, or has received a notice of satisfaction from the New York city department of environmental protection, may receive a fee rebate as established by rule.

**§28-112.6.3.5 Rebate for recycling construction and demolition waste.** Owners who demonstrate the recycling of construction and demolition waste may receive a fee rebate as established by rule.

**§28-112.6.3.6 Rebate for bicycle storage facilities.** Except for R-3 occupancy, owners who demonstrate that they have provided secured indoor bicycling facilities accessible to all building occupants may be rebated their fees as set out in rule. Such facilities shall be identified on approved plans and shall be noted on the certificate of occupancy with a statement that the bicycling accommodations dedicated to such facilities were provided in accordance with this section.

**§28-112.6.3.7 Rebate for LEED or other environmental design certification.** Owners who demonstrate certification of their project, which was signed off following the effective date of this code, by the United States Green Building Council based upon the Council's Leadership in Energy and Environmental Design (LEED) rating system or as otherwise provided by rule, may be rebated their fees as set out in rule.

**§28-112.6.3.8 Other rebates.** The commissioner is authorized to promulgate rules to rebate fees following sign-off based upon the installation of energy-conserving systems.

**§28-112.7 Inspection and report filing fees.** Aside from the fees covered under permit fees above, the following inspection and report filing fees shall be paid according to requirements of this code and as promulgated in rules.

**§28-112.7.1 Fees for the testing, approval, inspection and use of power-operated cranes, derricks and cableways.** The owner of any crane or derrick shall renew the certificate of operation each year. See Table 28-112.7.1.

**TABLE 28-112.7.1**

<b>EQUIPMENT TYPE</b>	<b>FILING FEE</b>	<b>RENEWAL FEE</b>	<b>COMMENTS</b>
<p>Prototype approval of one configuration of a mobile crane. One configuration shall be comprised of the crane with a main boom, one fixed jib and one set of counterweights.</p> <p>Amendment to a configuration.</p>	<p>\$2500 when testing has been monitored and certified by a competent individual or group, other than the manufacturer, acceptable to the commissioner; \$4000 when, in lieu of monitoring and certification of tests, the commissioner shall require design calculations for such items as the commissioner deems necessary to supplement the tests.</p> <p>One-half the original configuration fee.</p>		<p>Additional configurations shall be subject to the same fee as the original configuration.</p>
<p>Prototype approval of a mobile crane with a hydraulic boom.</p>	<p>\$4000</p>		
<p>Certificate of approval for mobile crane with a boom less than two hundred feet in length; fee also includes initial certificate of operation.</p>	<p>\$500</p>	<p>\$250 annually</p>	<p>The boom length as herein specified shall include the jibs and any other extensions to the boom.</p>
<p>Certificate of approval for mobile crane with a boom two hundred feet or more in length, but less than three hundred feet in length; fee also includes initial certificate of operation.</p>	<p>\$1000</p>	<p>\$250 annually</p>	<p>The boom length as herein specified shall include the jibs and any other extensions to the boom.</p>
<p>Certificate of approval for mobile crane with a boom three hundred feet or more in length but less than four hundred feet in length; fee also includes initial certificate of operation.</p>	<p>\$2000</p>	<p>\$400 annually</p>	<p>The boom length as herein specified shall include the jibs and any other extensions to the boom.</p>
<p>Certificate of approval for mobile crane with a boom four hundred feet or more in length; fee also includes initial certificate of operation.</p>	<p>\$3000</p>	<p>\$400 annually</p>	<p>The boom length as herein specified shall include the jibs and any other extensions to the boom.</p>
<p>Certificate of approval for master climber and tower cranes and derricks, regardless of length; fee also includes initial certificate of operation.</p>	<p>\$3000</p>	<p>\$400 annually</p>	
<p>Certificate of approval for all other cranes; fee also includes initial certificate of operation.</p>	<p>\$1000</p>	<p>\$250 annually</p>	
<p>Certificate of approval required for a mobile crane with a boom not exceeding fifty feet in length with a maximum rated capacity not exceeding three tons; fee also includes initial certificate of operation.</p>	<p>\$300</p>	<p>\$200 annually</p>	<p>The boom length as herein specified shall include the jibs an any other extensions to the boom.</p>
<p>Certificate of operation-sign hanger, fifty-one feet to one-hundred thirty five feet with capacity of 3 tons or less.</p>	<p>\$250</p>	<p>\$200 annually</p>	
<p>New certificate of approval, when the boom or extension thereof is replaced or altered.</p>	<p>The fee shall be the full fee required for testing a new crane or derrick with a boom or extension of the same size</p>		

EQUIPMENT TYPE	FILING FEE	RENEWAL FEE	COMMENTS
	and design as the replacement boom or extension thereof.		
Review only of engineering calculations for mobile crane with a boom exceeding 250 feet to be erected by a licensed master or special rigger, for which a certificate of on-site inspection is not required under this code or rules of the department.	\$100		
On-site inspection of up to three models of mobile cranes with boom, including jibs and other extensions to the boom two hundred fifty feet or more in length, or derrick.	\$250 during business hours; \$750 outside business hours; upon written request of the applicant.	\$100	
All other on-site inspections of cranes.	\$150	\$100	
Amendment to an application for certificate of on-site inspection.	\$100		
Application for waiver of on-site inspection of mobile crane or derrick.	\$100		
Notification of Outrigger Beam Installation or dismantling	As provided by department rules		
Notification of use, installation or dismantle of all cranes	As provided by department rules		

§28-112.7.2 Report filing fees. See Table 28-112.7.2.

**TABLE 28-112.7.2**

REPORT TYPE	FILING FEE	RENEWAL FEE	COMMENTS
Filing fee for report of critical examination of exterior walls and appurtenances thereof.	As provided by department rules.		
Filing fee for inspection report of potentially compromised buildings or structures.	As provided by department rules.		
Filing fee for report of condition assessment of retaining walls.	As provided by department rules.		
Filing fee for periodic boiler inspection report.	\$30 for each boiler.		

§28-112.7.3 Other inspection fees. See Table 28-112.7.3.

**TABLE 28-112.7.3**

INSPECTION TYPE	FILING FEE	RENEWAL FEE	COMMENTS
Each inspection of a temporary amusement device	\$100		
Marquee inspection.	\$15 annually for each one hundred square feet or fraction thereof.		---
Place of assembly inspection, including following a violation.	\$100 each inspection, each place of assembly.		---
Search inspection of a building with a frontage of twenty-five feet or less and a depth of one hundred feet or less. <ul style="list-style-type: none"> <li>Additional fee for building with frontage exceeding twenty-five feet.</li> <li>Additional fee for building with depth exceeding one hundred feet.</li> </ul>	\$20 for each floor for the first three floors; \$10 for each additional floor; \$100 minimum total. Increase above fee by 40% for each floor for each additional twenty-five feet or fraction thereof. Increase above fee by 25% for each floor for each additional twenty-five feet or fraction thereof.		A basement or a cellar shall count as a floor. Where both a basement and a cellar exist, the cellar shall not count as a floor in computing fee.

§28-112.7.4 **Equipment inspection fees.** See Table 28-112.7.4.

**TABLE 28-112.7.4**

EQUIPMENT INSPECTION TYPE	FILING FEE	RENEWAL FEE	COMMENTS
<ul style="list-style-type: none"> <li>High-pressure boiler periodic inspection.</li> <li>Reinspection fee following a violation.</li> <li>Equipment inspection fee: Each elevator or other device regulated by this code.</li> </ul>	\$65 for each inspection, for each boiler. As provided by department rules, \$100 for each inspection, for each device.		

§28-112.8 **Special fees.** The department shall be entitled to charge the following special fees in accordance with Table 28-112.8:

**TABLE 28-112.8**

SERVICE TYPE	FEE	RENEWALS	COMMENTS
Accelerated plan review	As provided by department rules		
Accelerated inspection	As provided by department rules		
Certificate of occupancy request	As provided by department rules		
Accelerated certificate of occupancy request	As provided by department rules		
Application for temporary certificate of occupancy	\$100	\$100	
Reinspection made necessary by a failure to correct a	As provided by department rules		

condition or respond to a request to correct that results in issuance of a violation or other order			
Temporary place of assembly certificate of operation	\$100	\$100	
Temporary use letter (does not include fees for any associated temporary structure)	For the initial 30 days of duration \$100. \$100 for each additional 30 day period of permit duration.	\$100 for each additional 30 days	
Temporary use letter for place of assembly	\$250		Application shall be submitted at least ten work days prior to the event; late fees shall be imposed at \$100 for each day following required submission date that the application is received by the department.
Subpoena	As provided by applicable state or federal law		
Place of assembly certificate of operation	\$200		\$100 amendment
Ordinary plumbing work	\$100 for each report		
Limited plumbing alteration	Filing fee as calculated for respective building alteration		
Limited sprinkler and/or standpipe alteration	Filing fee as calculated for respective building alteration		
Limited oil burner/boiler alteration	Filing fee as calculated for respective building alteration		
<b><i>Approval or acceptance of materials, assemblies and equipment</i></b>			
Application for approval of materials	\$600		
Application for amendment of prior approval of materials	\$500		
Application for change of identification (change of ownership, corporate name or name of product) of prior approval	\$350		
Application for approval of materials evaluated by an approved testing agency	\$200		
<b><i>Other fees</i></b>			
Certificate of pending violation: Multiple and private dwellings	As provided by department rules		
Certificate of pending violation: All other buildings	As provided by department rules		
Certified copy of license	As provided by department rules		
Records Management of applications for new buildings and alterations and associated documentation for certificates of occupancy, temporary certificates of occupancy, "compliance reports" and/or letters of completion, as required by rule of the commissioner	As provided by department rules		
Preparing only or preparing and certifying a copy of a record or document filed in the department	As provided by department rules		
Notification of, the installation or removal of an adjustable suspended scaffold	\$35		
Issuance of a core certificate of completion, which indicates	\$100		

completion of the building structure, the elevator systems, stairs, and all fire safety systems			
Issuance of letter of no objection to or classification of a specified occupancy of a premises, as follows:			
<ul style="list-style-type: none"> <li>• 1, 2, or 3 family homes</li> <li>• All other premises</li> </ul>	\$25 \$100		
Fees for after-hours work variances.			
<ul style="list-style-type: none"> <li>• The initial application fee for an after-hours variance</li> <li>• The renewal application fee for an after-hours variance</li> </ul>	\$100 \$100		
For each day for which such variance is granted or renewed	\$80		
Application for approved agency approval	As provided by department rules		
Application for special inspector authorization	As provided by department rules		
Failure to keep a scheduled plan examination appointment	As provided by department rules		
Failure to keep a scheduled inspection appointment	As provided by department rules		

**§28-112.9 Lien on premises for unpaid fee or other charge.** Any unpaid fee or charge for an inspection, reinspection, examination or service performed by the department or other unpaid amount owed to the department, and all permits issued by the department, pursuant to law shall constitute a lien upon the land and buildings upon or in respect to which such inspection, reinspection, examination or service was performed or permit issued, as hereinafter provided.

**§28-112.9.1 Filing of fees.** The department shall maintain a record of all unpaid fees and other charges. Such records shall be kept on a building by building basis and shall be accessible to the public during business hours. An entry of an unpaid amount on the records of the department shall constitute notice to all parties.

**§28-112.9.2 Lien.** All such unpaid amounts shall constitute a lien upon the land and building upon, or in respect to which, such inspection, reinspection, examination or service was performed or permit issued when the amount thereof shall have been definitely computed as a statement of account by the department and the department shall file such statement with the department of finance for entry in the records of such department against the premises. Such lien shall have a priority over all other liens and encumbrances except for the lien of taxes and assessments. However, no lien created pursuant to this section 28-112.9 shall be enforced against a subsequent purchaser in good faith or mortgagee in good faith unless the requirements of section 28-112.9.1 are satisfied.

**§28-112.9.3 Notice.** A notice, stating the amount due and the nature of the charge, shall be mailed by the department of finance, to the last known address of the person whose name appears on the records in the office of the department of finance as being the owner or agent or as the person designated by the owner to receive tax bills or, where no name appears, to the premises, addressed to either the owner or the agent.

**§28-112.9.4 Interest.** If such charge is not paid within 30 days from the date of entry, it shall be the duty of the department of finance to receive interest thereon at the rate of 15 percent per annum, to be calculated to the date of payment from the date of entry.

**§28-112.9.5 Tax lien.** Such charge and the interest thereon shall continue to be, until paid, a lien on the premises. Such lien shall be deemed a tax lien within the meaning of sections 11-319 and 11-401 of the administrative code and may be sold, enforced or foreclosed in the manner provided in chapter three or four of title eleven of such code or may be satisfied in accordance with the provisions of section thirteen hundred fifty-four of the real property actions and proceedings law.

**§28-112.9.6 Reference.** The notice mailed by the department of finance pursuant to this section 28-112.9 shall have stamped or printed thereon a reference to this section 28-112.9.

**§28-112.9.7 Validity not subject to challenge in enforcement proceeding.** In any proceedings to enforce or discharge a lien created pursuant to this section 28-112.9 the validity of the lien shall not be subject to challenge based on:

1. The lawfulness of the inspection, reinspection, examination, service or permit; or
2. The propriety and accuracy of the fee for which a lien is claimed, except as provided in this section 28-112.9.

**§28-112.9.8 Standing to challenge.** No such challenge may be made except by (i) the owner of the property, or (ii) a mortgagee or lienor whose mortgage or lien would, but for the provisions of this section 28-112.9, have priority over the department's lien.

**§28-112.10 Waiver of application, permit and inspection fees for certain work arising out of the storm that occurred on October 29 and 30, 2012.** The commissioner shall waive the fees that would otherwise be required to be paid by this code, the electrical code or the rules of the department for applications, permits and inspections for certain work arising out of the storm that occurred on October 29 and 30, 2012 as provided in subsections 28-112.10.1 and 28-112.10.2.

**§28-112.10.1 Eligible buildings.** For the purposes of this article, eligible buildings that, following the storm and pursuant to an inspection program established by the department under an emergency order of the Mayor, are designated by the department after inspection through a notation on the department's records and/or by the posting of a red placard warning on the building or premises as seriously damaged and unsafe to enter or occupy or completely demolished and/or washed away. With respect to eligible buildings, fees associated with applications, permits and inspections shall be waived for alteration work, demolition work, construction of new buildings and associated work, including but not limited to associated electrical and plumbing work. The commissioner may request the applicant to submit additional information relating to the damage. Waiver of such fees pursuant to this section shall be applicable for jobs where the initial application for construction document approval or, if no construction documents are required, application for permit is submitted on or after October 30, 2012 and on or before October 31, 2014.

**§28-112.10.2 Storm related damage to electrical and plumbing systems.** In buildings other than eligible buildings, fees shall be waived only for applications, permits and inspections for work related to plumbing and electrical systems damaged by such storm. Applicants must submit certification by a licensed master electrician or a licensed master plumber or fire suppression piping contractor that the proposed work is related to such storm damage. The commissioner may request the applicant to submit additional information relating to the damage. Waiver of such fees pursuant to this section shall be applicable for jobs where the initial application for construction document approval or, if no construction documents are required, application for permit is submitted on or after October 30, 2012 and on or before December 31, 2013.

**§28-112.11 Waiver of application, permit and inspection fees for work funded under the “Build It Back” program.** The city has implemented a disaster recovery program known as the Build It Back program that uses federal Community Development Block Grant Disaster Recovery funds to aid in the recovery of residential property damaged or destroyed in the severe storm known as Sandy that occurred on October 29 and 30, 2012. To assist in such recovery, the commissioner shall waive fees, which would otherwise be required to be paid to the department by this code, the electrical code or the rules of the department, in connection with applications, permits and inspections for work that is officially approved and funded under the Build It Back program. The waiver provided for in this section shall apply only to work performed on property that is classified as residential and to fees payable on or after July 1, 2014. With respect to work on a mixed use building, fees payable on or after such date may only be waived for work on the residential units of such building and portions of such building that serve the residential units.

## **ARTICLE 113 MATERIALS**

**§28-113.1 General.** Materials shall be used, tested and approved for use in accordance with the specific provisions of this code and department rules, except that the commissioner shall have the power to limit or prohibit the use of any material to protect public safety. Materials shall be identified or described on construction documents and other related documents.

**§28-113.2 Use of materials.** Except as set forth in sections 28-113.2.1 through 113.2.6 materials specifically prescribed by this code or department rules may be used as prescribed without the prior approval of the commissioner.

**§28-113.2.1 Approved material.** Whenever this code or the rules of the department requires the use of an approved material, such material shall not be used without the prior approval of the commissioner for such use and may be used only to the extent set forth in such approval.

**§28-113.2.2 Alternative materials.** Except as otherwise specifically limited by this code, the provisions of this code are not intended to prevent the installation of any material or to prohibit any alternative engineered design or method of construction not specifically prescribed by this code, provided that the use of such alternative material has been previously approved by the commissioner and may be used only to the extent set forth in such approval. The use of an alternative material, design, method of construction or equipment shall be approved where the commissioner finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

**§28-113.2.3 Listed or labeled.** Whenever this code or the rules of the department requires that material used be listed or labeled to a standard, material that is so listed or labeled may be used in accordance with such list or label without the prior approval of the commissioner. However, the commissioner reserves the right to require that information be submitted with regard to the testing and evaluation of any material so listed or labeled including but not limited to inspection certificates, test or evaluation reports, analysis, computations or other information used to determine that the material so listed or labeled complies with the applicable standard.

**§28-113.2.4 Material not listed or labeled.** Whenever this code or the rules of the department requires that material be listed or labeled to a standard and material proposed to be used is not so listed or labeled, the use of such material shall be subject to prior approval by the commissioner and such material shall be used only to the extent set forth in such approval.

**§28-113.2.5 Reuse.** The use of used material that meets the requirements of this code for new material is permitted unless otherwise provided in this code. Used equipment and devices shall not be reused without the prior approval of the commissioner and may be used only to the extent set forth in such approval.

**§28-113.2.6 Previously issued approvals.** Materials that were previously approved by the board of standards and appeals or by the department before July 1, 2008 may continue to be used to the extent that such approval is not inconsistent with the requirements or standards of this code, unless specifically amended or repealed by the commissioner.

**§28-113.3 Approval procedure.** Approval of materials pursuant to section 28-113.2 shall be in accordance with procedures set forth in this code and the rules of the department. The cost offsets, reports and investigations required under these provisions shall be paid by the applicant.

**§28-113.3.1 Performance.** When required by the commissioner, specific information consisting of test reports conducted by an approved testing agency in accordance with standards referenced in the construction codes or other such information as necessary, shall be provided for the commissioner to determine whether the material will perform for the use intended.

**§28-113.3.2 Research and investigation.** When required by the commissioner, sufficient technical data shall be submitted to the commissioner to substantiate the proposed use of any material. If it is determined that the evidence submitted is satisfactory proof of performance for the use intended, the commissioner shall approve the use of the material subject to the requirements of this code.

**§28-113.3.3 Retesting of materials.** All materials tested and accepted for use shall be subject to periodic retesting as determined by the commissioner; and any material that upon retesting is found not to comply with the code requirements or the requirements set forth in the approval of such material shall cease to be acceptable for the use intended. During the period for such retesting, the commissioner may require the use of such material to be restricted or discontinued if necessary to secure safety.

**§28-113.3.4 New materials.** New materials not provided for in this code, and any material of questioned suitability proposed for use in the construction of a building or structure, shall be subjected to the tests prescribed in this code or in the rules of the department to determine character, quality and limitations of use.

**§28-113.3.5 Research reports.** Supporting data, where necessary to assist in the approval of materials not specifically provided for in this code, shall consist of valid research reports from approved sources or other equivalent approved supporting documentation.

**§28-113.3.6 Conflicting test results.** Whenever there is evidence of conflicting results in the test of any material, the commissioner shall determine the acceptability of the material and/or the acceptable rating for such material.

**§28-113.3.7 Amendment and repeal.** The commissioner shall have the power to amend or repeal the approval of any material, including materials previously approved by the board of standards and appeals.

**§28-113.3.8 Maintenance of records of approved material.** For any material that has been approved, a record of such approval, including the conditions and limitations of the approval, shall be posted on the department's website or shall be made available for public inspection at appropriate times.

**§28-113.4 Labeling.** Materials required to be labeled shall be labeled in accordance with the procedures set forth in this code or the recognized referenced standards.

**§28-113.4.1 Testing.** An approved agency shall test a representative sample of the material being labeled to the relevant standard or standards. The approved agency shall maintain a record of the tests performed. The record shall provide sufficient detail to verify compliance with the test standard.

**§28-113.4.2 Inspection and identification.** The approved agency shall at regular intervals perform surveillance inspections, which shall be in-plant if necessary, of the material that is to be labeled. The inspection shall verify that the labeled material is representative of the material tested.

**§28-113.4.3 Label information.** The label shall contain the manufacturer's or distributor's identification, model number, serial number or definitive information describing the material's performance characteristics and the approved agency's identification.

**§28-113.4.4 Shipment and delivery certification of materials listed, labeled or approved.** In the case of the shipment or delivery of material listed or labeled to a standard, such material shall be appropriately labeled or accompanied by the inspection certificate of an approved agency that the material is the same as that which was tested and evaluated by such agency. In the case of the shipment or delivery of material previously approved by the commissioner, the material shall be identified by a tag or certificate indicating that the material is the same that was approved for its intended use by the commissioner or, if applicable, previously approved by the board of standards and appeals, and containing the applicable approval number or calendar number under which the material received such approval.

**§28-113.5 Volatile organic compounds emissions in carpet and carpet cushion.** On and after July 1, 2013 carpet and carpet cushion as defined in section 17-1401 of the administrative code shall comply with the limits on volatile organic compound emissions set forth in chapter 14 of title 17 of such code.

## **ARTICLE 114 APPROVED AGENCIES**

**§28-114.1 General.** Approved agencies shall satisfy the provisions of this article and the rules of the department as to qualifications and operations. The commissioner may revoke or suspend the commissioner's approval of or otherwise sanction an approved agency for cause.

**§28-114.1.1 Independent.** An approved agency shall perform its authorized duties objectively and competently. The agency shall disclose possible conflicts of interest so that objectivity can be confirmed.

**§28-114.1.2 Testing equipment.** An approved agency shall have adequate testing equipment to perform required tests. The equipment shall be periodically calibrated.

**§28-114.1.3 Personnel.** An approved agency shall employ experienced personnel qualified to conduct, supervise and evaluate the tests or inspections that it undertakes. Special inspections may be performed only by employees of such agency who are special inspectors qualified pursuant to department rules to perform or witness the particular test or inspection. The commissioner may require proof of the qualifications of employees.

**§28-114.1.4 Background.** The commissioner may require an approved agency to submit to an investigation of its background and of the background of its principals as a condition of approval.

**§28-114.1.5 Insurance.** An approved agency shall maintain liability insurance as required by department rules.

**§28-114.2 Written evaluation by approved agency.** An agency's evaluation of material or report of an inspection shall be in writing after satisfactory completion of the required inspection or test.

**§28-114.3 Records.** The approved agency shall maintain records of inspection and test reports for at least six years or for such period

as the commissioner shall determine and shall make such records available to the department upon request.

**§28-114.4 Re-authorization of approved agencies.** An approved agency shall have its approval re-authorized in accordance with rules of the department.

## **ARTICLE 115 SPECIAL INSPECTION AGENCIES AND SPECIAL INSPECTORS**

**§28-115.1 General.** Special inspection agencies are approved agencies and shall be subject to the provisions of article 114 of this chapter. Special inspection agencies and special inspectors shall satisfy the provisions of this article and the rules of the department as to qualifications in order to perform special inspections required by chapter 17 of the New York city building code or elsewhere in this code or department rules.

**§28-115.2 Disqualification.** The commissioner may disqualify a special inspection agency or a special inspector from performing special inspections pursuant to this code for cause. The special inspection agency or special inspector shall be given prior notice of the proposed disqualification and the opportunity to contest such action. A list of special inspection agencies and special inspectors who have been disqualified from performing special inspection shall be maintained and made available to the public upon request.

**§28-115.3 Records.** A special inspector shall maintain records of special inspections on a building by building basis for at least 6 years or for such period as the commissioner shall determine and shall make such records available to the department upon request.

## **ARTICLE 116 INSPECTIONS AND SIGN-OFF OF COMPLETED WORK**

**§28-116.1 General.** Construction or work for which a permit is required shall be subject to inspection in accordance with this code and such construction or work shall remain accessible and exposed for inspection purposes until the required inspection is completed. A satisfactory inspection by the department or the acceptance by the department of a satisfactory report of an inspection by an approved agency shall not be construed to be an approval by the department of a violation of the provisions of this code or of any other provision of law. It shall be the duty of the permit holder to cause the work to remain accessible and exposed for inspection purposes. The permit holder shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection. The inspector shall supply a report of the results of each inspection.

**§28-116.1.1 Defective work and discrepancies with approved construction documents.** An approved agency conducting inspections shall report defective work and discrepancies with the approved construction documents to the contractor and, when applicable, to the superintendent of construction, for correction. The approved agency shall report uncorrected discrepancies and defective work to the registered design professional of record and the owner in writing.

**§28-116.1.2 Hazardous conditions.** The approved agency shall report all conditions noted as hazardous to life, safety or health that are not immediately corrected to the immediate attention of the commissioner.

**§28-116.2 Types of inspections.** The inspections set forth in sections 28-116.2.1 through 28-116.2.4 are required or authorized by this code.

**§28-116.2.1 Preliminary inspection.** Before approving construction documents, the commissioner is authorized to examine or cause to be examined structures or premises for which an application has been filed.

**§28-116.2.2 Compliance inspections.** In addition to the inspections specified in this code, the commissioner is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced by the department.

**§28-116.2.3 Special inspections, progress inspections and other inspections required during the progress of work.** After the issuance of a work permit, special inspections, progress inspections and other inspections required by this code to be made during the progress of the work shall be made at such times or at such stages of the work and in such manner as shall be provided by this code or as otherwise required by the commissioner. The permit application shall set forth an inspection program for the work. Such inspections may be made by approved agencies or by the department as provided in this code or in the rules of the department. Special inspections shall be performed only by individuals who are special inspectors. The commissioner may accept inspection and test reports from approved agencies and the work may, unless otherwise specifically provided by code provisions or directed by the commissioner, proceed without any verifying inspection or test by the department. The names and business addresses of special inspectors and approved agencies shall be set forth in the work permit application. All inspection reports shall be in writing and signed by the person or entity performing the inspection. A record of all inspections shall be kept by the person performing the inspection. The commissioner may require inspection reports to be filed with the department. Records of inspections made by approved agencies and special inspectors shall be maintained by such persons for a period of six years after sign-off of the work or for such other period of time as the commissioner may require and shall be made available to the department upon request.

**§28-116.2.3.1 Special and progress inspection of fabricated items.** Where fabrication of regulated products is performed on the premises of a fabricator's shop, special or progress inspection of the fabricated items is required. The approved agency shall verify that the fabricator maintains detailed fabrication and quality control procedures that provide a basis for inspection control of the workmanship and the fabricator's ability to conform to approved construction documents and referenced standards. The approved agency shall review the procedures for completeness and adequacy relative to the code requirements for the fabricator's scope of work.

**Exceptions:**

1. Work that is subject to progress inspections and performed on the fabricator's premises shall not be subject to progress inspections where the fabricator is approved by the commissioner in accordance with section 28-116.6.
2. Work that is subject to special inspections and performed on the fabricator's premises shall be inspected by the special inspection agency in accordance with Section 1704.2.2.3 of the New York city building code where the fabricator is approved by the commissioner in accordance with section 28-116.6.

**§28-116.2.3.2 Special inspection of raising and moving of a building.** Where the lowest above-grade floor or the lowest subgrade floor of a building is to be raised, lifted, elevated or moved, special inspection of such work is required. The permit holder shall notify the department in writing at least 48 hours before the commencement of such work.

**§28-116.2.4 Final inspection.** There shall be a final inspection of all permitted work. Final inspections shall comply with sections 28-116.2.4.1 through 28-116.2.4.2.

**§28-116.2.4.1 Final inspection prior to certificate of occupancy.** In all cases where the permitted work requires the issuance of a new or amended certificate of occupancy, the final inspection shall be performed by the department in the presence of the permit holder, the registered design professional of record or the superintendent of construction. Such inspection shall be performed after all work authorized by the building permit is completed and before the issuance of the certificate of occupancy. All failures to comply with the provisions of this code or approved construction documents shall be noted and the owner promptly notified thereof in writing. All defects noted in such inspection shall be corrected. Reports of such final inspections shall be maintained by the department. The final inspection report shall confirm that defects noted have been corrected, that the work is in substantial compliance with the approved construction documents and with this code and with other applicable laws and rules and that all required inspections were performed.

**Exception:** For amended certificates of occupancy subject to section 28-118.16.2, the term construction documents, as used in section 28-116.2.4.1, shall consist of an accurate and complete final lot survey made by a land surveyor, and floor and roof plans showing, at a minimum, compliance with exit requirements in accordance with this code.

**§28-116.2.4.2 Final inspection prior to letter of completion.** In all cases where the permitted work does not require the issuance of a certificate of occupancy, the final inspection shall be performed by the department or at the option of the owner by an approved agency. Whenever the department performs a final inspection, the department shall charge a fee for such inspection. The applicant shall take all reasonable and necessary steps to ensure that the final inspection is performed within one year after the expiration of the last permit. The inspection shall be performed after all work authorized by the building permit is completed. The approved agency performing the inspection shall report defective work and discrepancies with the approved construction documents to the contractor and, when applicable, to the superintendent of construction, for correction. The approved agency shall report uncorrected discrepancies and defective work to the registered design professional of record and the owner in writing. The approved agency shall report all conditions noted or observed as hazardous to life, safety or health that are not immediately corrected to the immediate attention of the commissioner. All defects noted in such inspection shall be corrected. The final inspection report shall confirm that defects noted have been corrected, that the work is in substantial compliance with the approved construction documents and with this code and other applicable laws and rules and that all required inspections were performed. Final inspection reports shall be filed with and maintained by the department. Records of final inspections made by approved agencies shall be maintained by such persons for a period of six years after sign-off or for such other period as the commissioner shall require and shall be made available to the department upon request.

**§28-116.3 Inspection requests.** It shall be the duty of the permit holder to notify the department or the person or entity designated to perform the inspection when work requiring inspection is ready to be inspected. It shall be the duty of the permit holder to provide access to and means for inspection of such work for any inspections that are required by this code.

**§28-116.3.1 Additional notifications for special inspections.** The permit holder shall also notify the relevant special inspection agency in writing at least 72 hours prior to the commencement of any work requiring special inspection.

**§28-116.4 Sign-off of completed work.** Upon submission of a satisfactory report of final inspection and all required submittal documents, the department shall document the sign-off of the project and issue a letter of completion, or, if applicable, a certificate of occupancy for the work. The owner shall take all necessary steps required by the department for the issuance of such letter of completion or certificate of occupancy within 1 year following the expiration of the last permit.

**§28-116.4.1 Issuance of certificate of compliance.** The following types of service equipment shall not be operated until the department issues a certificate of compliance after submission of a satisfactory report of inspection and testing of such equipment in accordance with this code and all required submittal documents:

1. Air-conditioning, ventilation and exhaust systems.
2. Elevators, escalators, moving walkways and dumbwaiters.
3. Fuel burning and fuel-oil storage equipment.
4. Refrigeration systems.
5. Heating systems.
6. Boilers.

**Exception:** A certificate of compliance shall not be required in connection with work specifically exempted from permit requirements in accordance with this code or department rules.

**§28-116.5 Payment of outstanding penalties.** The department may refuse to issue a letter of completion or certificate of occupancy pending payment of all outstanding fines or civil penalties imposed for violations of this code, the 1968 building code or other laws enforced by the department at the same building.

**§28-116.6 Fabricator approval.** Approval of fabricators by the department shall be based upon review of the fabricator's written procedural and quality control manuals and periodic auditing of fabrication practices by an approved agency.

**§28-116.6.1 Fabricator's certificate of compliance.** For all fabricated items, the approved fabricator shall submit a certificate of compliance to the department stating that the work was performed in accordance with the approved construction documents, referenced standards and applicable provisions of law.

## **ARTICLE 117 PLACES OF ASSEMBLY**

**§28-117.1 Place of assembly certificate of operation.** It shall be unlawful to use or occupy any building or space, including an outdoor space, as a place of assembly without a certificate of operation issued by the commissioner. An application for a certificate of operation shall be made to the department in such form and containing such information as the commissioner shall provide. The department shall inspect every place of assembly space prior to the issuance of a certificate of operation. The commissioner shall not issue a certificate of operation unless the department determines that the space conforms substantially to the approved construction documents and to this code or the 1968 building code as applicable and that the certificate of occupancy authorizes such use. A certificate of operation shall not be issued to a place of assembly providing seating or other moveable furnishings unless the commissioner approves a plan conforming to this code or the 1968 building code as applicable and the rules of the department. Seating and other moveable furnishings shall be maintained at all times during occupancy in accordance with the approved plan. Any amendment of such plan shall be subject to the prior approval of the commissioner.

**§28-117.1.1 Contents of the place of assembly certificate of operation.** The certificate of operation shall contain the place of assembly certificate number, the number of persons who may legally occupy the space and any other information that the commissioner may determine. Such certificate of operation shall be framed and mounted in a location that is conspicuously visible to a person entering the space. For the purposes of this article a department issued place of assembly permit or place of assembly certificate of operation shall be valid until its expiration, at which time a new place of assembly certificate of operation shall be required in accordance with the provisions of this article and with the filing requirements of the department.

**§28-117.1.2 New certificate required.** The following changes to a place of assembly shall require a new place of assembly certificate of operation instead of an amendment filed in accordance with section 28-117.1.3:

1. For a department issued place of assembly permit or place of assembly certificate of operation that does not have a nine-digit job number, any change of zoning use group, assembly occupancy group A-1 through A-5, or any of the changes set forth in section 28-117.1.3.
2. For all other department issued place of assembly permits or place of assembly certificates of operation, any change of zoning use group or assembly occupancy group A-1 through A-5.

**§28-117.1.3 Amendments.** No change shall be made to a place of assembly that is inconsistent with the most recently issued place of assembly certificate of operation or renewal unless an amendment to such certificate is filed with and approved or accepted by the department. Changes that require an amendment include any of the following:

1. Any physical change requiring an alteration permit to be issued by the department.
2. Any amendment to the plan for seating and other moveable furnishing, in accordance with section 28-117.1.

3. Any change to the name of the establishment.

**§28-117.2 Temporary place of assembly certificate of operation.** At the commissioner's discretion, a temporary certificate of operation may be issued for a place of assembly space upon request by the applicant in accordance with this code provided that public safety is not jeopardized thereby. The applicant shall notify the fire department when a temporary place of assembly certificate of operation is issued.

**Exception.** Applications for temporary certificates of operation for place of assembly space in prior code buildings shall be permitted to comply with the 1968 building code provided that public safety is not jeopardized thereby.

**§28-117.3 Duration of certificate.** A place of assembly certificate of operation shall be issued by the department and shall be effective for one year after its issuance. Thereafter, such certificate shall be effective only for periods of time during which there is in effect an annual place of assembly permit issued by the fire department pursuant to section 105.6 of the New York city fire code.

**§28-117.4 Security guards.** In the case of a certificate holder that offers for sale food and/or beverages for on-premises consumption, but not including establishments operated by a not-for-profit corporation, and employs or uses the services of a security guard, as that term is defined in subdivision six of section eighty-nine of the general business law, such certificate holder shall comply with the provisions of article 7-A of the general business law, shall obtain proof that such security guard is registered pursuant to article 7-A of the general business law, shall maintain such proof in a readily available location, in accordance with rules promulgated by the commissioner during all hours in which such place of assembly is open to the public, shall maintain a roster of all security guards working at any given time when such place of assembly is open to the public, and shall require each security guard to maintain on his or her person proof of registration at all times when on the premises.

**§28-117.4.1 Presumption.** For purposes of this section, there shall be a rebuttable presumption that a person employed or whose services are retained at a place of assembly is a security guard if his or her job functions include:

1. The monitoring or guarding of the entrance or exit of such place of assembly to manage ingress and egress to such place of assembly for security purposes during the hours of operation of such establishment; and/or
2. Protection of such place of assembly from disorderly or other unlawful conduct by patrons of such place of assembly.

**§28-117.4.1.1 Presumption not applicable to owner.** The rebuttable presumption in section 28-117.4.1 shall not apply to an individual who is an owner of the establishment as described in section 28-117.4 that has received a place of assembly certificate of operation.

**§28-117.4.2 Responsibility for violations.** Notwithstanding any provision of this section, only the holder of a certificate of operation shall be liable for violations of this article that relate to such holder's obligations regarding security guards.

**§28-117.4.3 Enforcement.** In addition to employees of the department, employees of the police department and the department of consumer affairs shall have the authority to enforce the provisions of this article regarding security guards.

**§28-117.4.4 State liquor authority reporting.** The enforcement agency shall report any violation of the provisions of this section relating to security guards to the state liquor authority if the holder of the certificate of operation holds a license pursuant to the alcoholic beverage control law.

**§28-117.5 Outdoor places of assembly.** The commissioner shall not issue a certificate of operation to an outdoor temporary or permanent place of assembly, including, but not limited to, tents, platforms, stages and outdoor assembly seating, unless the department determines that the space complies with the provisions of the code.

## ARTICLE 118 CERTIFICATES OF OCCUPANCY

**§28-118.1 General provisions.** No building or open lot shall be used or occupied without a certificate of occupancy issued by the commissioner. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other applicable laws and rules.

**§28-118.2 New buildings or open lots.** No building hereafter constructed or open lot shall be occupied or used, in whole or in part, unless and until a certificate of occupancy shall have been issued certifying that such building or open lot conforms substantially to the approved construction documents and the provisions of this code and other applicable laws and rules.

**§28-118.3 Completed buildings or open lots.** The provisions of sections 28-118.3.1 through 28-118.3.4 shall apply to completed buildings or open lots.

**§28-118.3.1 Change of occupancy or use.** No building, open lot or portion thereof hereafter altered so as to change from one occupancy group to another, or from one zoning use group to another, either in whole or in part, shall be occupied or used unless and until the commissioner has issued a certificate of occupancy certifying that the alteration work for which the permit was issued has been completed substantially in accordance with the approved construction documents and the provisions of this code and other applicable laws and rules for the new occupancy or use.

**§28-118.3.2 Changes inconsistent with existing certificate of occupancy.** No change shall be made to a building, open lot or portion thereof inconsistent with the last issued certificate of occupancy or, where applicable, inconsistent with the last issued certificate of completion for such building or open lot or which would bring it under some special provision of this code or other applicable laws or rules, unless and until the commissioner has issued a new or amended certificate of occupancy.

**§28-118.3.2.1 Changes in the address, block, lot, or zoning lot.** When changes are made in the address of the structure, block and/or lot numbers or metes and bounds of the zoning lot that are inconsistent with the certificate of occupancy, the owner shall obtain a new or amended certificate of occupancy within one year.

**§28-118.3.3 Changes to exits.** No building hereafter altered so as to cause a major alteration to existing exits shall be occupied or used unless and until the commissioner has issued a certificate of occupancy certifying that the alteration work for which the permit was issued has been completed substantially in accordance with the approved construction documents and the provisions of this code and other applicable laws and rules.

**§28-118.3.4 Existing buildings or open lots without certificates of occupancy.** A building or open lot in existence prior to January 1, 1938 and heretofore legally used or occupied without a certificate of occupancy or, if applicable, a certificate of completion, and subject to the provisions of section 28-102.4 (continuation of lawful existing use), may continue to be used or occupied without a certificate of occupancy or, if applicable, a certificate of completion, pursuant to the requirements of section six hundred forty five of the New York city charter, this code and other applicable laws and rules provided there is no change in the existing use or occupancy classification of the building, open lot or portion thereof.

**§28-118.3.4.1 Application for certificate of occupancy.** Upon application by the owner of such a building or open lot in existence prior to January 1, 1938, the commissioner shall issue a certificate of occupancy for such building, provided that at the time of issuing such certificate, such existing building is in compliance with all retroactive requirements of the 1968 building code applicable to such building and no notices of violation or other notices or orders affecting the building as they relate to the provisions of this code or the 1968 building code are pending before the department, and provided further that it is established to the satisfaction of the commissioner, after inspection and investigation, that the alleged use of the building has heretofore legally existed.

**§28-118.3.4.2 Partial certificates of occupancy.** Partial certificates of occupancy may be issued pursuant to section 28-118.16.

**§28-118.4 Applications for certificates of occupancy.** All applications for certificates of occupancy shall be submitted on forms furnished by the department. Applications for new buildings or additions to buildings shall be accompanied by an accurate and complete final lot survey made by a land surveyor showing such information as prescribed by the commissioner. The commissioner may waive the requirement of such survey in the case of small sheds, stands, temporary structures, signs, and similar small structures.

**§28-118.4.1 Applicant.** The application for a certificate of occupancy shall be made by or on behalf of the owner of the building or open lot; and if made by a person other than the owner, the application shall be accompanied by a signed statement of the applicant stating that the applicant is authorized by the owner to make the application. The full names and addresses of the owner, and applicant, and of the principal officers thereof, if a corporation, shall be stated in the application.

**§28-118.4.2 Statement of compliance.** When a certificate of occupancy for a new or altered building is applied for, the application shall be accompanied by a signed statement of the registered design professional of record or the superintendent of construction, as applicable, stating that such person has examined the approved construction documents and specifications of the building for which the certificate of occupancy is sought, and that, to the best of his or her knowledge and belief, the building has been erected or altered in accordance with the approved construction documents and specifications and, as erected or altered, complies with the provisions of this code and all other applicable laws and rules, except insofar as variations or variances therefrom have been legally permitted or authorized, specifying such variations or variances in such required statement.

**§28-118.5 Review of applications for certificates of occupancy.** All applications for certificates of occupancy and accompanying submittal documents shall be examined promptly after their submission. If the building is entitled to the certificate of occupancy applied for, the application shall be approved and the certificate of occupancy issued by the commissioner within 10 calendar days after submission of a complete application. Otherwise, the application shall be rejected and written notice of rejection, stating the grounds of rejection, shall be given to the applicant within 10 calendar days of the submission of the application. Wherever an application has been rejected and proof is thereafter submitted establishing that the grounds of rejection have been met and that the building is entitled to the certificate of occupancy applied for, the application shall be approved and the certificate of occupancy issued within 10 calendar days after submission of such proof.

**§28-118.6 Issuance of certificate of occupancy.** After the commissioner inspects the building or open lot and determines that the building or open lot conforms substantially to the approved construction documents and to the provisions of this code and other applicable laws and rules, the commissioner shall issue a certificate of occupancy that shall contain information including, but not limited to:

1. The building permit number.
2. The address of the structure.
3. Block and lot numbers pertaining to the zoning lot as of the date of issuance, as defined in section 12-10 of the New York city zoning resolution.

4. The description of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code.
6. The name and signature of the commissioner.
7. The code under which the permit was issued.
8. The use and occupancy, in accordance with this code and the zoning resolution.
9. The type of construction as defined in this code.
10. The design occupant load of floors and spaces.
11. Types of major fire suppression or alarm systems.
12. Any special stipulations and conditions of the building permit.
13. The maximum permissible live loads on the several floors of the building.
14. The number of parking spaces.

**§28-118.7 Pavement plan.** No certificate of occupancy shall be issued for any building or open lot requiring a pavement plan pursuant to article 108 unless and until an inspection has been made to show that all work necessary for compliance with the pavement plan has been completed.

**§28-118.7.1 Certification.** No certificate of occupancy shall be issued for any building or open lot requiring a certification pursuant to article 108 unless and until the applicant, after completion of construction work, inspects the sidewalk and certifies that the sidewalk is free from defects.

**Exception:** The commissioner may issue a certificate of occupancy if in lieu of such certification the owner furnishes to the department prior to the issuance of the certificate of occupancy security satisfactory to the department that the sidewalk will be installed and paved or repaired within the time specified by the department.

**§28-118.8 Sanitary/storm water drainage.** No certificate of occupancy shall be issued until the department confirms by inspection that all work relating to the installation of the part of the sanitary/storm water drainage system which lies outside of such property, if and as required by section 24-526 of the administrative code, has been satisfactorily completed.

**§28-118.9 Fire protection plan.** No certificate of occupancy shall be issued until a fire protection plan, if required pursuant to article 109, has been filed and accepted.

**§28-118.10 Electrical work.** No certificate of occupancy shall be issued unless compliance with the New York city electrical code is certified by the commissioner.

**§28-118.11 Certificates of compliance.** No certificate of occupancy shall be issued until certificates of compliance are issued for the following types of service equipment:

1. Air conditioning and ventilation systems.
2. Elevators, escalators, moving walkways and dumbwaiters.
3. Fuel burning and fuel oil storage equipment.
4. Refrigeration systems.
5. Heating systems.
6. Boilers.

**§28-118.12 Place of assembly certificate of operation.** The issuance of a certificate of occupancy shall not authorize the use of any space as a place of assembly unless and until the commissioner thereafter issues a place of assembly certificate of operation.

**§28-118.13 Certificates of occupancy for air-inflated structures, air-supported structures, and tents.** Certificates of occupancy for air-inflated structures, air-supported structures, and tents shall be issued for a period not exceeding one year. Such certificates may be renewed for one-year periods upon demonstration that the structure complies with all laws and rules in effect at the time of the request for renewal.

**§28-118.14 Payment of outstanding penalties.** The department may refuse to issue a certificate of occupancy for a building pending payment of all outstanding fines or civil penalties imposed for violations of this code, the 1968 building code or other laws enforced by the department at the same building.

**§28-118.15 Temporary certificates of occupancy.** Upon application, the commissioner is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that the subject portion or portions of the building may be occupied and maintained in a manner that will not endanger public safety, health, or welfare. The commissioner shall set a time period during which the temporary certificate of occupancy is valid.

**§28-118.16 Amended certificate of occupancy.** The provisions of sections 28-118.16.1 through 28-118.16.2 shall apply to amended certificates of occupancy.

**§28-118.16.1 Buildings exceeding three stories in height and change does not exceed 20 percent of total floor area.** Where a building exceeds three stories in height and the change does not exceed 20 percent of the total floor area, an amendment to the existing certificate of occupancy for such new use shall be issued by the commissioner certifying that the proposed new occupancy and use conforms to the provisions of the laws governing building construction and that the proposed use will not be in conflict with any provisions of the labor law, multiple dwelling law or the zoning resolution.

**§28-118.16.2 Change in address of the structure, block and lot numbers or metes and bounds of a zoning lot subsequent to the issuance of a certificate of occupancy.** Where no change is made to a building, open lot or portion thereof inconsistent with the last issued certificate of occupancy, an amended certificate of occupancy may be issued to reflect a change in the address of the structure, block and lot numbers or the metes and bounds of the zoning lot. Notwithstanding any other provisions of law, removal of violations and payments of outstanding penalties are not required prior to issuance of an amended certificate of occupancy in accordance with this section 28-118.16.2.

**§28-118.17 Revocation of certificates of occupancy.** The commissioner is authorized to request, in writing, pursuant to section six hundred forty five of the New York city charter that the board of standards and appeals or a court of competent jurisdiction revoke, vacate, or modify a certificate of occupancy issued under the provisions of this code whenever the certificate is issued in error, or on the basis of incorrect information provided to the department.

**§28-118.18 Record of certificates.** A record of all certificates of occupancy shall be kept by the department; and copies thereof shall be furnished by the department upon request, and on the payment of the fee prescribed in article 112 of this chapter. The certificate of occupancy or a copy thereof shall be available for inspection at the building at all reasonable times.

**§28-118.19 Posting of certificates of occupancy.** The owner shall post a copy of the building's certificate of occupancy in accordance with this section 28-118.19, except buildings occupied entirely by group R3. Buildings that are not required to have a certificate of occupancy shall be posted by the owner with a sign or placard in a form prescribed by the commissioner. The certificate of occupancy or sign, as applicable, shall be permanently affixed to the structure in a conspicuous location in a public hall, corridor, management office of the building or as otherwise prescribed by the commissioner.

**§28-118.19.1 Replacement of posted certificates of occupancy and signs.** All posted certificates of occupancy or signs, as applicable, shall not be removed or defaced and, if lost, removed or defaced, shall be immediately replaced. The commissioner may inspect or cause to be inspected periodically all buildings for compliance with the provisions of this code in regard to posting; and the inspection reports shall specify any violation thereof.

**§28-118.20 Partial certificate of occupancy.** A partial certificate of occupancy may be issued to a specific floor or floors of an existing building erected prior to January 1, 1938 subject to the following conditions:

1. The building does not have and is not otherwise required to have a certificate of occupancy or certificate of completion, if applicable.
2. The floor or floors for which a certificate of occupancy is issued shall not constitute more than 50 percent of the gross floor area of the building.
3. The building is of noncombustible construction and protected with an automatic sprinkler system.
4. Adequate means of egress are provided from all floors.
5. Upon inspection, the building is deemed safe for occupancy.

**§28-118.21 Live loads posted.** Where the live loads for which each floor or portion thereof of a commercial or industrial building is or has been designed to exceed 50 psf (2.40 kN/m<sup>2</sup>), a certificate of occupancy required by this article shall not be issued until such design loads shall be conspicuously posted by the owner in that part of each story in which they apply, using durable signs. It shall be unlawful to remove or deface such signs.

**Exception:** This section 28-118.21 shall not apply to prior code buildings.

## **ARTICLE 119 SERVICE UTILITIES**

**§28-119.1 Connection of service utilities.** It shall be unlawful for any utility company or utility corporation to supply gas to a building, place or premises in which new meters other than replacement are required until a certificate of approval of gas installation from the department is filed with such utility company or utility corporation. When new gas service piping has been installed it shall be locked-off by the utility company or utility corporation either by locking the gas service line valve or by installing a locking device on the outside gas service line valve. The lock shall not be removed until the gas meter piping (other than utility owned) and gas distribution piping have been inspected and certified as required by the department of buildings as being ready for service.

**§28-119.1.1 Gas shut-off for alterations to gas piping systems.** When alterations, extensions or repairs to existing gas meter piping or gas distribution piping require the shut-off of gas flow to a building, the utility company shall be notified by the owner or his or her authorized representative.

**§28-119.2 Temporary connection.** The commissioner shall have the authority to authorize the temporary connection of the building

or system to the gas service utility.

**§28-119.3 Authority to disconnect utility service.** The commissioner may authorize disconnection of gas service to the building, structure or system regulated by this code and the codes referenced in case of emergency where necessary to eliminate an immediate hazard to life or property. The department shall notify the local gas utility company, and wherever possible the owner and occupant of the building, structure or service system of the decision to disconnect prior to taking such action.

## CHAPTER 2

# ENFORCEMENT

### ARTICLE 201 GENERAL

**§28-201.1 Unlawful acts.** It shall be unlawful to erect, construct, alter, extend, repair, fail to maintain, move, remove, demolish, occupy, use or operate any building, structure, premises, or equipment, or to conduct any subject matter regulated by this code or by the zoning resolution, or to cause same to be done, in conflict with or in violation of any of the provisions of this code, the zoning resolution, or the rules of the department or, with regard to existing buildings, any applicable provision of the 1968 building code or any other law or rule enforced by the department. It shall be unlawful to fail to comply with an order of the commissioner or to violate any order of the commissioner issued pursuant to this code, the 1968 building code, the zoning resolution or any law or rule enforced by the department.

**§28-201.2 Classification of violations.** The commissioner shall promulgate rules classifying all violations of this code, the zoning resolution or, with regard to existing buildings, the 1968 building code or other laws or rules enforced by the department as immediately hazardous violations, major violations or lesser violations unless the classification of such violations is specifically directed by this code. Such classification shall be based on the effect of the violation on life, health, safety or the public interest or the necessity for economic disincentive.

**§28-201.2.1 Specified immediately hazardous violations.** The commissioner shall classify the following violations as immediately hazardous:

1. With respect to violations of article 210 of this chapter:
  - 1.1. A violation of section 28-210.1 in which a building legally approved for occupancy as a one-family or two-family dwelling (as set forth in the certificate of occupancy or if no certificate of occupancy is required, as evidenced by official records) is illegally converted to or maintained as a dwelling for occupancy by four or more families; or
  - 1.2. A violation of sections 28-210.1 and 28-210.2 in any building involving the illegal conversion, maintenance or occupancy of three or more dwelling units than are legally authorized by the certificate of occupancy or if no certificate of occupancy is required as evidenced by official records.
2. Any violation of section 28-211.1 false statement;
3. Any violation of a stop work order or of a cease use order;
4. Any violation of a vacate order or order to seal, secure and close, or closure order;
5. Unlawful demolition;
6. Falsely impersonating an employee or authorized representative of the department;
7. Occupancy without a required certificate of occupancy;
8. Intentional disobedience or violation of any provision of a closure order;
9. Submittal of a materially false or misleading professional certification.
10. A violation of section 28-212.11.
11. A violation of section 28-307.1.
12. A violation by a licensed rigger or person performing the functions and duties of a licensed rigger of the provisions of sections 28-404.1 or 28-401.9 of this code or such person's failure to ensure that workers have certificates of fitness required pursuant to this code or applicable rule or any person's violation of the provisions of section 3314.4.3.1 of the New York city building code.
13. A violation of any provision of chapter 4 of this title for engaging in any business or occupation without a required license or other authorization.
  - 13.1. The minimum civil penalty that shall be imposed for a violation of section 28-408.1 or section 28-410.1 of this code and the minimum fine that shall be imposed for a violation of such sections shall be two thousand five hundred dollars for the first violation and five thousand dollars for each subsequent violation.
14. Any person who knowingly permits or causes a violation of paragraph 3314.4.5 or paragraph 3314.4.6 of subdivision 3314.4 of section BC 3314 of the building code.
15. A violation of sections 3303.4.5 and 3303.4.6 of the building code.
16. A violation of section 28-210.3 that involves more than one dwelling unit or a second or subsequent violation of

section 28-210.3 by the same person at the same dwelling unit or multiple dwelling.

**§28-201.2.2 Specified major violations.** The commissioner shall classify the following violations as major violations:

1. A violation of section 28-210.1 or 28-210.2 other than a violation that is directed to be classified as immediately hazardous.
2. Failure to perform required façade, retaining wall, elevator and boiler inspections, or tests, structural inspections of buildings and structures that are potentially compromised as defined in section 28-217.1, and to file required reports within the applicable time period.
3. Failure to provide the notice required by section 3314.1.1 of the New York city building code.
4. A violation of the zoning resolution by any person for causing damage to or removing a tree within a Special Natural Area District, as defined in the zoning resolution.
  - 4.1. The fine or civil penalty for a violation described in item 4 shall be not less than seven hundred fifty dollars for each tree damaged or removed.
5. Notwithstanding the provisions of section 28-204.2 of this code, a violation of item 3 or item 4 of section 1008.1.3.5 of the New York city building code except that no penalty for such violation shall be imposed if the respondent corrects the condition constituting the violation and files a certificate with the department that the condition has been corrected within ninety days from the date set forth in the notice of violation. It shall be an affirmative defense that the nonconforming security grille was installed prior to July 1, 2011.
  - 5.1. The fine or civil penalty for a violation described in item 5 shall be not less than two hundred fifty dollars for the first offense and not less than one thousand dollars for each subsequent offense.

**§28-201.2.3 Specified lesser violations.** The commissioner shall classify the following violations as lesser violations:

1. A violation of item 5 of section 1110.1 or of section 1110.2 of the New York city building code, or a violation of section 28-313.1 or 28-313.2 of the administrative code of the city of New York.

**§28-201.3 Methods of enforcement.** The commissioner may use any of the methods set forth in this code to enforce compliance with this code, the 1968 building code, the zoning resolution, other laws or rules enforced by the department and orders of the commissioner issued pursuant thereto including but not limited to:

1. Proceedings for the recovery of civil penalties for immediately hazardous, major and lesser violations before the environmental control board or other administrative tribunal.
2. Civil judicial proceedings for the recovery of civil penalties or injunctive relief or both for immediately hazardous, major and lesser violations.
3. Criminal judicial proceedings for the imposition of criminal fines or imprisonment or both for immediately hazardous, major and lesser violations.
4. The issuance and enforcement of peremptory orders for immediately hazardous, major and lesser violations.
5. The issuance of a commissioner's request for correction of an unlawful use or condition or order to correct an unlawful use or condition.
6. Other special remedies as set forth in this code, the zoning resolution or other law or rule.

**§28-201.3.1 Issuance.** Officers and employees of the department and of other city agencies designated by the commissioner shall have the power to issue summonses, appearance tickets, orders and notices of violation based upon violations of this code, the 1968 building code, the zoning resolution or other laws or rules enforced by the department, orders, and requests for corrective action.

**§28-201.4 Aggravating and mitigating factors.** Civil penalties and criminal fines and imprisonment shall be imposed within the ranges set forth in this code or as otherwise specified in this code or other law, with due regard for mitigating and aggravating factors.

## ARTICLE 202 CIVIL PENALTIES

**§28-202.1 Civil penalties.** Except as otherwise specified in this code or other law, violations of this code, the 1968 building code, the zoning resolution or other laws or rules enforced by the department shall be punishable by civil penalties within the ranges set forth below:

1. For immediately hazardous violations, a civil penalty of not less than one thousand dollars nor more than twenty-five thousand dollars may be imposed for each violation. In addition to such civil penalty, a separate additional penalty may be imposed of not more than one thousand dollars for each day that the violation is not corrected. The commissioner may by rule establish such specified daily penalties.
2. For major violations, a civil penalty of not more than ten thousand dollars may be imposed for each violation. In addition to

such civil penalty, a separate additional penalty may be imposed of not more than two hundred fifty dollars for each month that the violation is not corrected. The commissioner may by rule establish such specified monthly penalties.

3. For lesser violations, a civil penalty of not more than five hundred dollars may be imposed for each violation.

**Exceptions:**

- \*1. The owner, lessee, occupant, manager or operator of a building affected by a natural or man-made disaster, as determined by the commissioner, shall not be subject to a civil penalty for a violation involving such building if (i) notice of such violation is issued by the department during the 90-day period immediately after such disaster or, in the case of a major natural or man-made disaster as determined by the commissioner, during the six-month period immediately after such disaster, and (ii) such violation is corrected on or before 40 days after such disaster period or such greater amount of time as determined by the commissioner for such violation. The notice of such violation shall state that such violation is subject to this exception and shall set forth the procedure and time period for correcting such violation without incurring a civil penalty. This exception shall not apply to immediately hazardous violations, violations charged as aggravated violations or violations without connection to such disaster, as determined by the department.
- \*2. The owner, lessee, occupant, manager or operator of a building where a violation occurs shall not be subject to a civil penalty for such violation if (i) such violation was connected to a natural or man-made disaster, as determined by the commissioner, and (ii) such building is undergoing, or scheduled or under evaluation for, work or acquisition through a city-operated disaster recovery program responding to such disaster.
- \*\*3. The owner, lessee, occupant, manager or operator of a building shall not be subject to a civil penalty for a violation resulting from work done by a city employee, or by a third party under contract with the city, in response to a natural or man-made disaster, provided that such violation is corrected on or before 60 days after the issuance of such violation, or such greater amount of time as determined by the commissioner for such violation. If such owner, lessee, occupant, manager or operator of a building can demonstrate to the satisfaction of the department that a city employee or third party under contract with the city has committed to correcting such violation then such violation shall be rescinded, without penalty. The notice of such violation shall state that such violation is subject to this exception and shall set forth the procedure and time period for correcting such violation without incurring a civil penalty. This exception shall not apply to immediately hazardous violations or violations charged as aggravated violations.

*\*Section 28-202.1 was amended by [Local Law 59 of 2016](#). This law has an effective date of August 8, 2016.*

*\*\*Section 28-202.1 was amended by [Local Law 54 of 2016](#). This law has an effective date of August 8, 2016.*

**§28-202.2 Continuing violations.** Notwithstanding the assessment of daily penalties, each day that a violation continues shall be a separate and distinct offense.

**ARTICLE 203  
CRIMINAL PENALTIES**

**§28-203.1 Criminal fines and imprisonment.** Except as otherwise specified in this code or other law, violations of this code, the 1968 building code, the zoning resolution or other laws or rules enforced by the department shall be punishable by criminal fines and imprisonment within the ranges set forth below:

1. Every person convicted of violating a provision of this code, the 1968 building code, the zoning resolution or other law or rule enforced by the department or an order of the commissioner issued pursuant thereto that is classified by the commissioner or the code as an immediately hazardous violation shall be guilty of a misdemeanor punishable by a fine of not more than twenty-five thousand dollars or by imprisonment of not more than one year or by both such fine and imprisonment.
2. Every person convicted of violating a provision of this code, the 1968 building code, the zoning resolution or other law or rule enforced by the department or an order of the commissioner issued pursuant thereto that is classified by the commissioner or the code as a major violation shall be guilty of a violation punishable by a fine of not more than ten thousand dollars or imprisonment for not more than 15 days or both such fine and imprisonment.
3. Every person convicted of violating a provision of this code, the zoning resolution or other law or rule enforced by the department or an order of the commissioner issued pursuant thereto that is classified by the commissioner or the code as a lesser violation shall be guilty of a violation punishable by a fine of not more than five hundred dollars.

**Exceptions:**

- \*1. The owner, lessee, occupant, manager or operator of a building affected by a natural or man-made disaster, as determined by the commissioner, shall not be subject to a criminal fine or imprisonment if notice of such violation was issued during the 90-day-period immediately after such disaster or, in the case of a major natural or man-made disaster as determined by the commissioner, during the six-month period immediately after such disaster. This exception shall not apply to immediately hazardous violations, violations charged as aggravated violations or violations without connection to such disaster.
- \*2. The owner, lessee, occupant, manager or operator of a building where a violation occurs shall not be subject to a

criminal fine or imprisonment for such violation if (i) such violation was connected to a natural or man-made disaster, as determined by the commissioner, and (ii) such building is undergoing, or schedule or under evaluation for, work or acquisition through a city operated disaster recovery program responding to such disaster.

\*\*3. The owner, lessee, manager or operator of a building shall not be subject to criminal fines or imprisonment for a violation resulting from work done by a city employee or third party under contract with the city, in response to a natural or man-made disaster. This exception shall not apply to immediately hazardous or violations charged as aggravated violations.

*\*Section 28-203.1 was amended by [Local Law 59 of 2016](#). This law has an effective date of August 8, 2016.*

*\*\*Section 28-203.1 was amended by [Local Law 54 of 2016](#). This law has an effective date of August 8, 2016.*

**§28-203.2 Continuing violations.** In the case of continuing violations each day's continuance shall be a separate and distinct offense.

## **ARTICLE 204 ENVIRONMENTAL CONTROL BOARD**

**§28-204.1 General.** Any person who shall violate or fail to comply with any of the provisions of this code, the 1968 building code, the zoning resolution or other laws or rules enforced by the department or with any order issued pursuant thereto shall be liable for a civil penalty that may be recovered in a proceeding before the environmental control board. Such proceeding shall be commenced by the service of a notice of violation returnable before the board. Such notice of violation may be issued by employees of the department or of other city agencies designated by the commissioner and may be served by such employees or by a licensed process server.

**§28-204.2 Order to certify correction.** Each such notice of violation shall contain an order of the commissioner directing the respondent to correct the condition constituting the violation and to file with the department electronically or in such other manner as the department may authorize by rule a certification that the condition has been corrected. Unless otherwise provided by rule, such order shall require that violations classified as major or lesser be corrected within 30 days from the date of the order, that violations classified as immediately hazardous be corrected forthwith. Such order shall also require that certification of the correction of the violation shall be filed with the department in a manner and form and within such period of time as shall be established by the department. In any proceeding before the environmental control board, no civil penalty shall be imposed for a lesser violation if the respondent complies with the commissioner's order to correct and to certify correction of the violation within the applicable time period. However, such violation may serve as a predicate for purposes of assessing aggravating factors attributable to multiple offenses.

**§28-204.3 Failure of proof.** In any proceeding before the environmental control board, if the board finds that the commissioner has failed to prove the violation charged, the order requiring the respondent to correct the condition constituting the violation and to file a certification of correction shall be deemed dismissed.

**§28-204.4 Failure to certify the correction of a violation.** Failure to comply with an order of the commissioner issued pursuant to section 28-204.2 or pursuant to any provision of law or rule enforced by the department in effect at the time the order was issued to correct and to certify correction of a violation within the applicable time period shall be a violation of this code for which penalties may be imposed in addition to the penalties that may be or have been imposed for the violation referred to in such order. Upon application, for good cause, the commissioner may extend the time for filing the certification of correction of a violation, but not for more than 30 days for each extension.

**§28-204.5 False statements in certification of correction.** For the purposes of this section 28-204.5, if the environmental control board finds that a certification of correction filed pursuant to section 28-204.2 contained material false statements relating to the correction of a violation, such certification of correction shall be null and void and the penalties set forth in this code for the violation may be imposed as if such false certification had not been filed with and accepted by the department. It shall be an affirmative defense that the respondent neither knew nor should have known that such statements were false.

**§28-204.6 Tax lien.** Enforcement of environmental control board judgments against owners for certain building code violations. Notwithstanding any provision of law to the contrary, an environmental control board judgment against an owner for a building code violation with respect to a private dwelling, a wooden-framed single room occupancy multiple dwelling, or a dwelling with a legal occupancy of three or fewer dwelling units shall constitute a tax lien on the property named in the violation with respect to which such judgment was rendered, as hereinafter provided. Such liens shall be entered and enforced as provided in this section 28-204.6.

**§28-204.6.1 Record of unpaid judgments.** There shall be filed in the office of the department a record of all such unpaid judgments. Such records shall be kept by tax lot and block number and shall be accessible to the public during business hours. An entry of a judgment on the records of the department shall constitute notice to all parties.

**§28-204.6.2 Lien.** All such unpaid judgments shall constitute a lien upon the property named in the violation with respect to which such judgment was rendered when the amount shall have been definitely computed as a statement of account by the department, and the department shall file such statement with the department of finance for entry against the property. Such lien shall have a priority over all other liens and encumbrances except for the lien of taxes and assessments. However, no lien created pursuant to this section 28-204.6 shall be enforced against a subsequent purchaser in good faith or mortgagee in good faith unless the requirements of section 28-204.6.1 are satisfied.

**§28-204.6.3 Notice.** A notice, stating the amount due and the nature of the charge, shall be mailed by the department of finance to the last known address of the person whose name appears on the records of the department of finance as being the owner or agent of the property or as the person designated by the owner to receive tax bills or, where no name appears, to the property, addressed to either the “owner” or the “agent.”

**§28-204.6.4 Mailing.** Such notice mailed by the department of finance pursuant to this section 28-204.6.4 shall have stamped or printed thereon a reference to section 204.6.

**§28-204.6.5 Failure to pay charge.** If such charge is not paid within 30 days from the date of entry, it shall be the duty of the department of finance to receive interest thereon at the same rate as unpaid real property taxes, to be calculated to the date of payment from the date of entry.

**§28-204.6.6 Enforcement of lien.** Such charge and the interest thereon shall continue to be, until paid, a lien on the property. Any remedy or procedure available for the enforcement of tax liens against such property, including, but not limited to, any sale of a tax lien or any foreclosure of a tax lien, shall be available with respect to such tax lien. In addition, such tax lien may be satisfied in accordance with the provisions of section 1354 of the real property actions and proceedings law.

**§28-204.6.7 Validity of lien.** In any proceeding to enforce or discharge a lien created pursuant to this section 28-204.6, the validity of the lien shall not be subject to challenge based on the lawfulness of the judgment, except as provided in this section 28-204.6.

**§28-204.6.8 Challenge.** No such challenge may be made except by the owner of the property or a mortgagee or lienor whose mortgage or lien would, but for the provisions of this section 28-204.6, have priority over the department’s lien.

**§28-204.6.9 Notice to mortgagees and lienors.** Notwithstanding the foregoing provisions, no such judgment shall be entered and enforced as a tax lien against any property unless at the time of the issuance of the notice of violation a copy of such notice was also served on all mortgagees and lienors of record of such property by mail addressed to the recorded addresses of such mortgagees and lienors.

**§28-204.6.10 Non-exclusive remedy.** The procedures provided in this section 28-204.6 for the enforcement of environmental control board judgments against owners shall be in addition to any other methods provided under any other provision of law for the enforcement of such judgments.

## **ARTICLE 205 CIVIL JUDICIAL PROCEEDINGS**

**§28-205.1 Civil judicial enforcement.** The owner, lessee, person in charge, or occupant of any building, structure, premises, equipment or part thereof, where a violation of this code, the 1968 building code, the zoning resolution or of other laws or rules enforced by the department or any order issued by the commissioner shall exist or the agent, architect, builder, contractor, engineer, or any other person who commits or assists in any such violation or who maintains any building, structure, premises, equipment or part thereof where any such violation shall exist shall be subject to an action or proceeding to restrain, correct or abate such violation, or to compel compliance with such order. Upon request of the commissioner, the corporation counsel may institute judicial actions or proceedings seeking such relief. In addition to any other remedies, in any such action or proceeding the defendant or respondent shall be subject to the payment of civil penalties as provided in this code.

**§28-205.1.1 Corporation counsel.** Such actions and proceedings may be instituted by the corporation counsel in the name of the city in any court of competent jurisdiction in the city and shall be given preference over pending causes therein. In such actions or proceedings, the city may apply for restraining orders, preliminary injunctions or other provisional remedies, with or without notice; and no undertakings shall be required as a condition to the granting or issuing of any such order, injunction or remedy, or by reason thereof. No court shall lose jurisdiction of any action or proceeding hereunder by reason of a plea that the title to real estate is involved if the object of the action is to recover a penalty for the violation of any of the provisions of this code.

**§28-205.1.1.1 Naming the building as a defendant.** The corporation counsel shall name as defendants the building, structure, or premises where the violation shall exist by describing it by block, lot number, and street address and at least one of the owners of some part of or interest in the building, structure, or premises.

**§28-205.1.1.2 In rem jurisdiction over the building.** In rem jurisdiction over the building, structure, or premises where the violation shall exist shall be complete by affixing the summons to the door of the building, structure, or premises and by mailing the summons by certified or registered mail, return receipt requested, to one of the owners of some part of or interest in the building, structure, or premises. Proof of service shall be filed within two days thereafter with the clerk of the court designated in the summons. Service shall be complete upon such filing.

**§28-205.1.1.3 Service on other defendants.** Defendants, other than the building, structure, or premises where the violation shall exist, shall be served with the summons as provided in the civil practice law and rules.

**§28-205.1.2 Presumptive evidence.** In any action or proceeding founded upon a claim by the commissioner that any law or rule enforceable by the department has been violated, or that a lawful order issued by such commissioner has not been complied with, the following presumptions shall apply:

**§28-205.1.2.1 Presumption of commissioner certificate.** A certificate in writing by the commissioner, or his or her authorized representative, shall be presumptive evidence of any matter stated therein.

**§28-205.1.2.2 Presumption of ownership.** The person in whose name the real estate affected by the action is recorded in the office of the city register or the county clerk, as applicable, shall be presumed to be the owner thereof.

**§28-205.1.2.3 Presumption of employment or agency.** Whenever there is evidence that a person was the manager, operator, or supervisor or, in any other way, in charge of the premises, at the time the violation occurred, such evidence shall be presumptive that he or she was an agent or employee of the owner and/or lessee of the building, structure, or premises.

**§28-205.1.3 Costs.** In no case shall the department, or any officer or employee thereof, be liable for costs in any such action or proceeding; and officers and employees of the department, acting in good faith and without malice, shall be free from liability for acts done in any such action or proceeding.

**§28-205.1.4 Lien.** Any judgment rendered in any such action or proceeding shall be and become a lien upon the premises named in the complaint in such action or proceeding, if any, the lien to date from the time of filing a notice of pendency in the office of the clerk of the county in which the premises is located, and to have priority before any mortgage or other lien existing prior to such filing, except tax and assessment liens.

**§28-205.1.5 Notice of pendency.** The notice of pendency referred to in this section 28-205.1.5 may be filed at the commencement of judicial proceedings; provided the commissioner may deem such action to be necessary. Any notice of pendency filed pursuant to the provisions of this code may be vacated and cancelled of record upon an order of a justice of the court in which such action or proceeding was instituted or is pending, or upon the consent in writing of the corporation counsel. The clerk of the county where the notice is filed is hereby directed and required to mark any such notice of pendency, and any record or docket thereof, as vacated and cancelled of record upon the presentation and filing of a certified copy of such order or consent.

## **ARTICLE 206 CRIMINAL JUDICIAL PROCEEDINGS**

**§28-206.1 Criminal judicial enforcement.** The owner, lessee, person in charge, or occupant of any building, structure, premises, equipment or part thereof, where a violation of this code, the 1968 building code, the zoning resolution or of other laws or rules enforced by the department or any order issued by the commissioner shall exist or the agent, architect, builder, contractor, engineer, or any other person who commits or knowingly assists in any such violation or who maintains any building, structure, premises, equipment or part thereof where any such violation shall exist shall be guilty of a criminal offense punishable by a fine or imprisonment or both a fine and imprisonment in accordance with this code.

**§28-206.1.1 Other penalties.** The criminal penalties provided by this code shall be in addition to or alternative to any civil sanctions authorized to be imposed for an unlawful use or condition cited in this code.

## **ARTICLE 207 PEREMPTORY ORDERS**

**§28-207.1 Contents and service.** Preemptory orders issued by the commissioner shall contain a description of the building, structure, premises, equipment or subject matter affected, and shall be designated by address where applicable. Such orders may be served personally or by posting at the premises followed by regular mail, by any officer or employee of the department, or by any person authorized by the commissioner.

**§28-207.2 Stop work orders.** Whenever the commissioner finds that any building work is being executed in violation of the provisions of this code, the 1968 building code, the zoning resolution or of any laws or rules enforced by the department, or in a dangerous or unsafe manner, the commissioner or his or her authorized representative may issue a stop work order.

**§28-207.2.1 Issuance.** Upon issuance of a stop work order by the commissioner, all work shall immediately stop unless otherwise specified. Such order may require all persons to forthwith vacate the premises pursuant to the provisions of section 28-207.4 and may also require such work to be done as, in the opinion of the commissioner, may be necessary to remove any danger therefrom. The police department or other law enforcement agency or officer shall, upon the request of the commissioner, assist the department in the enforcement of this section 28-207.2. The stop work order may be given verbally or in writing to the owner, lessee or occupant of the property involved, or to the agent of any of them, or to the person or persons executing the work. A verbal order shall be followed promptly by a written order and shall include the reason for the issuance of the stop work order.

**§28-207.2.2 Unlawful continuance.** No person shall with knowledge or notice of a stop work order allow, authorize, promote, continue or cause to be continued any work covered by the stop work order, except such work that may be required by order of the commissioner.

**§28-207.2.3 Rescission.** Upon application, the commissioner shall rescind the stop work order when the condition that gave rise to its issuance has been corrected and either all civil penalties or criminal fines assessed for any violation of such order have been paid or, where a violation is pending, security for the payment of such penalties or fines has been posted in accordance with department rules, or where the stop work order was issued in error or conditions are such that it should not have been issued. The commissioner may by rule require the payment of a fee in the amount of the expense of additional inspection and administrative expense related to such stop work order.

**§28-207.2.4 Mandatory stop work orders.** The commissioner shall issue stop work orders in the circumstances set forth below. Upon issuance of such stop work order, the work shall immediately stop and shall not resume until the stop work order is rescinded by the department. The stop work order shall not be rescinded less than two business days after the date of issuance of

such order. Nothing in the following sections shall be construed to limit the commissioner's power to issue stop work orders in other circumstances.

**§28-207.2.4.1 Scaffold safety.** A stop work order shall be issued if a permit holder or person directly in charge of any suspended scaffold supported by c-hooks or outrigger beams fails to notify the department prior to the installation or use of such equipment as required by section 3314.1.1 of the New York city Building code and either:

1. The rigger does not hold a license required by this code, or
2. The workers lack certificates of fitness as required by this code or applicable rule, or
3. The rigger failed to file with the department satisfactory evidence of insurance required by this code.

**§28-207.2.5 Tampering.** It shall be unlawful to tamper with, remove or deface a written posted stop work order from the location where it was affixed unless and until such stop work order has been rescinded by the commissioner. The owner or other person in control of the location shall ensure that the stop work order remains posted until rescinded by the commissioner.

**§28-207.2.6 Penalties.** In addition to the penalties provided for in this chapter, any person who fails to comply with a stop work order shall be liable for a civil penalty in the amount of five thousand dollars for the initial violation and ten thousand dollars for every subsequent violation, to be paid to the department prior to the rescission of the stop work order; provided, however, this shall not apply to any work performed to remedy an unsafe or hazardous condition as authorized by order of the commissioner.

**§28-207.3 Public nuisance.** Whenever any building, structure, place or premises is or may be perilous to life or property by reason of the nature or condition of its contents, its use, the overcrowding of persons therein, defects in its construction, or deficiencies in fire alarm, fire extinguishing equipment or fire escape equipment, or by reason of any condition in violation of law or order of the commissioner, the commissioner may declare that the same, to the extent that the commissioner may specify, is a public nuisance and may order the same to be removed, sealed, abated, repaired, altered or otherwise improved.

**§28-207.3.1 Rescission.** Upon application, the commissioner shall rescind such order when the condition that gave rise to its issuance has been corrected or where the declaration was issued in error or conditions are such that it should not have been issued. The commissioner may by rule require the payment of a fee in the amount of the expense of additional inspection and administrative expense related to such order.

**§28-207.4 Vacate order.** In case any order to remedy a condition that is or may be imminently perilous, dangerous or detrimental to life, public safety or property, issued by the commissioner is not complied with, or the commissioner determines that an emergency exists requiring such action, the commissioner may order and immediately cause any building, structure, place or premises to be vacated. The vacate order may be given verbally or in writing to the owner, lessee or occupant of the property involved, or to the agent of any of them, or to the person or persons executing the work. A verbal order shall be followed promptly by a written order and shall include the reason for the issuance of the vacate order.

**§28-207.4.1 Basis for vacate.** Conditions for which the commissioner may issue a vacate order shall include but shall not be limited to the following conditions that create a hazard to life, public safety, or property:

1. Danger of structural failure;
2. Danger of façade failure;
3. Inadequate fire protection, detection, or suppression;
4. Inadequate egress; or
5. Improper storage of hazardous materials, combustible or toxic.

**§28-207.4.2 Enforcement of vacate order.** All orders issued pursuant to this section 28-207.4 shall be posted upon the premises and made available to the public. Upon the posting of an order upon the premises, officers and employees of the police department, the department, and other authorized officers and employees of the city shall immediately act upon and enforce such order. The police department shall provide all reasonable assistance to the department and other authorized officers and employees necessary to carry out the provisions of this section 28-207.4. A copy of the vacate order may be filed with the county clerk of the county in which the premises is located and shall be filed with the department and accessible to the public. Such filing shall be notice of the vacate order to any subsequent owner and such owner shall be subject to such order.

**§28-207.4.3 Rescission.** Upon application, the commissioner may rescind the vacate order when the condition that gave rise to its issuance has been corrected and either all civil penalties or criminal fines assessed for any violation of such order have been paid or, where a violation is pending, security for the payment of such penalties or fines has been posted in accordance with department rules, or where the vacate order was issued in error or conditions are such that it should not have been issued. The commissioner may by rule require the payment of a fee in the amount of the expense of additional inspection and administrative expense related to such vacate order.

**§28-207.4.4 Tampering.** It shall be unlawful to remove or deface a written posted vacate order from the location where it was affixed unless and until such vacate order has been rescinded by the commissioner. The owner or other person in control of the location shall ensure that the vacate order remains posted until rescinded by the commissioner.

**§28-207.5 Cease use orders for service equipment.** Whenever the commissioner determines that the operation of any service equipment is or may be dangerous to life, health or safety, the commissioner may issue a cease use order requiring such equipment to be shut down or sealed or otherwise made inoperable. Upon the issuance of such order a tag or notice shall be affixed to the device warning that the equipment is unsafe for operation. It shall be unlawful to operate such equipment or to remove or deface such tag unless and until the cease use order is rescinded by the commissioner. The owner or other person in control of the service equipment shall ensure that such tag or notice remains affixed until rescinded by the commissioner.

**§28-207.5.1 Rescission of cease use order.** Upon application, the commissioner may rescind the cease use order when the condition that gave rise to its issuance has been corrected and either all civil penalties or criminal fines assessed for any violation of such order have been paid or, where a violation is pending, security for the payment of such penalties or fines has been posted in accordance with department rules or where the cease use order was issued in error or conditions are such that it should not have been issued. The commissioner may by rule require the payment of a fee in the amount of the expense of additional inspection and administrative expense related to such cease use order.

## **ARTICLE 208 COMMISSIONER'S REQUEST FOR CORRECTIVE ACTION**

**§28-208.1 Commissioner's request for corrective action.** As an alternative to the issuance of an order or notice of violation, the commissioner may issue a request for corrective action to any person responsible for any claimed unlawful use or condition in any premises. Each request for corrective action shall have the commissioner's signature affixed thereto; but the commissioner may authorize any subordinate to affix such signature, including an electronic signature.

**§28-208.1.1 Contents and delivery.** The request for corrective action shall contain a description of the building, structure, premises, equipment or subject matter affected, shall be designated by address, where applicable, shall be sent by regular mail or upon consent by electronic means to the owner, lessee, person in charge, or occupant of the building, structure, premises, equipment or to any person responsible for the unlawful use or condition at the last known address for such person. Requests for corrective action may be sent to a managing agent or other person specifically designated by the owner to attend to such requests on behalf of the owner. Each such request shall describe the unlawful use or condition, call upon the person addressed to correct it and to inform the department of the action taken. A time for correction or response shall be specified. A request for corrective action may be given orally, followed within a reasonable time by a writing as described in this section 28-208.1.1. A request for corrective action shall provide notice that failure to respond to such a request may result in the imposition of a fee for any subsequent inspection that results in the issuance of a notice of violation for the condition.

**§28-208.1.2 Public record.** The department shall keep a record, available to the public, of requests for corrective action issued pursuant to this article. The record of a request for corrective action shall be reflected as withdrawn upon submission to the department of a statement in a form prescribed by rule indicating that the use or condition has been corrected or did not exist or following an inspection by the department that confirms correction. A request for corrective action may be issued in response to a complaint or inspection.

**§28-208.1.3 Other remedies not precluded.** Nothing in this article shall be construed to limit the power of the commissioner to take any other action authorized by this code with respect to any unlawful use or condition including, but not limited to, the commencement of an action or proceeding in a court or before the environmental control board or other administrative tribunal or the issuance of a peremptory order or to require that the commissioner issue a request for corrective action as a prerequisite to any other enforcement action.

## **ARTICLE 209 COMMISSIONER'S ORDER TO CORRECT UNLAWFUL USE OR CONDITION**

**§28-209.1 General.** The commissioner may issue an order to the persons responsible for any unlawful use or condition in any premises directing such person to correct the unlawful use or condition. Each such order shall have the commissioner's signature affixed thereto; but the commissioner may authorize any subordinate to affix such signature, including an electronic signature.

**§28-209.2 Contents and service of order.** All orders issued by the commissioner shall contain a description of the building, structure, premises, equipment or subject matter affected, and shall be designated by address where applicable. All such orders shall be served by regular mail or, upon consent, electronically. Such orders may be served by any officer or employee of the department, or by any person authorized by the commissioner. An order may be given orally, followed within a reasonable time by a written order as described in this section 28-209.2. Failure to comply with a commissioner's order within the stated time period shall be a violation of this code punishable by civil penalties or criminal fines and imprisonment as set forth in this code. Proof of compliance with a commissioner's order shall consist of certification as prescribed by the rules of the department.

## **ARTICLE 210 ILLEGAL CONVERSIONS**

**§28-210.1 Illegal residential conversions.** It shall be unlawful, except in accordance with all requirements of this code, to convert any dwelling for occupancy by more than the legally authorized number of families or to assist, take part in, maintain or permit the maintenance of such conversion. Upon the finding of such violation and the imposition of punishment for such violation as set forth in this code the department or if applicable the environmental control board shall forward to the internal revenue service, the New York state department of taxation and finance and the New York city department of finance the name and address of the respondent or defendant, the address of the building or structure with respect to which the violation occurred and the time period during which the violation was found to have existed.

**§28-210.2 Illegal industrial or manufacturing conversions.** Except as otherwise provided by section 42-03 of the zoning resolution and the multiple dwelling law, it shall be unlawful, except in accordance with all requirements of this code, to convert to residential use any space legally authorized for occupancy for industrial or manufacturing use or to assist, take part in, maintain or permit the maintenance of such conversion. Upon the finding of such violation and the imposition of punishment for such violation as set forth in this code the department, or, if applicable, the environmental control board shall forward to the internal revenue service, the New York state department of taxation and finance and the New York city department of finance the name and address of the respondent or defendant, the address of the building or structure with respect to which the violation occurred and the time period during which the violation was found to have existed.

**§28-210.3 Illegal conversions of dwelling units from permanent residences.** Except as otherwise provided in subdivision 16 of section 67 of the multiple dwelling law and section 120 of the multiple dwelling law, dwelling units within (i) a class A multiple dwelling as defined in section 27-2004 of the administrative code, (ii) occupancy group J-2 as described in section 27-265 of the administrative code or (iii) occupancy group R-2 as described in section 310.1.2 of the New York city building code shall be used only for permanent residence purposes as required pursuant to subparagraph a of paragraph eight of subdivision a of section 27-2004 of the administrative code. It shall be unlawful for any person or entity who owns or occupies a multiple dwelling or dwelling unit classified for permanent residence purposes to use or occupy, offer or permit the use or occupancy or to convert for use or occupancy such multiple dwelling or dwelling unit for other than permanent residence purposes. For the purposes of this section a conversion in use of a dwelling unit may occur irrespective of whether any physical changes have been made to such dwelling unit. The provisions of this section shall not be construed to prohibit lawful accessory uses permitted pursuant to the zoning resolution or the lawful conversion of dwellings in accordance with applicable law.

## **ARTICLE 211 FALSE STATEMENTS**

**§28-211.1 False statements in certificates, forms, written statements, applications, reports, or certificates of correction.** It shall be unlawful for any person to knowingly or negligently make or allow to be made a material false statement in any certificate, professional certification, form, signed statement, application, report or certification of the correction of a violation that is either submitted directly to the department or that is generated with the intent that the department rely on its assertions.

**§28-211.1.1 Rebuttable presumption.** In any proceeding that relates to a false statement in a certification of correction of a violation filed in compliance with section 28-204.2 if an inspection made within six months after the filing of the certification finds a condition constituting a violation that is the same as the condition described in the notice of violation with respect to which such certification was filed, there shall be a rebuttable presumption that the condition described in such notice of violation continued and is the same condition found in the inspection.

**§28-211.1.2 Additional penalty for false statements.** In addition to any other penalty provided by law, the commissioner may refuse to accept an application or other document submitted pursuant to or in satisfaction of a requirement of this code or of a rule of any agency promulgated there under that bears the signature of a person who has been found, after a hearing at the office of administrative trials and hearings pursuant to the department's rules, to have knowingly or negligently made a false statement or to have knowingly or negligently falsified or allowed to be falsified any certificate, form, signed statement, application, report or certification of the correction of a violation required under the provisions of this code or of a rule of any agency promulgated there under.

**§28-211.2 Falsely impersonating a department officer, inspector, or employee.** It shall be unlawful for any person to falsely represent himself or herself as an officer, inspector or employee of the department, or as acting under the authority of the department, or without authority to use, wear or display a shield or other insignia or emblem such as is worn by such officer, inspector or employee.

## **ARTICLE 212 ABATEMENT OF PUBLIC NUISANCE CAUSED BY CERTAIN ILLEGAL OCCUPANCIES**

**§28-212.1 Abatement of public nuisances caused by illegal commercial or manufacturing occupancy in residence districts and certain other zoning districts.** Any building or part thereof or vacant land that is located in a residence zoning district and that is occupied for a use not permitted in such district in violation of the zoning resolution, without a certificate of occupancy authorizing such use, is hereby declared to be a public nuisance. Any building or part thereof or vacant land that is located in a C-1 or C-2 commercial zoning district and that is occupied for a commercial or manufacturing use indicated under use group 16, 17, or 18 as described in sections 32-25, 42-14, and 42-15 of the zoning resolution, in violation of the zoning resolution, without a certificate of occupancy authorizing such use is hereby declared to be a public nuisance.

**§28-212.2 Order of closure.** If a building or part thereof or vacant land in which such a nuisance occurs is not occupied primarily as a residence, the commissioner may, in addition to or as an alternative to any other remedy under any other provision of law, after notice and the opportunity for a hearing in accordance with this article, order the closing of such building or part thereof or such vacant land to the extent necessary to abate the nuisance.

**§28-212.3 Notice of hearing.** A notice of hearing with respect to an order of closure shall be served on the owner and mortgagee of record of such building or part thereof or such vacant land and on any person alleged to be occupying such building or part thereof or such vacant land at which the nuisance is located.

**§28-212.4 Service of notice of hearing.** Service may be made on the owner by delivering such notice to the owner or to an agent of the owner or to a person of suitable age and discretion at the residence or place of business of the owner or, if upon reasonable

application such delivery cannot be completed, by affixing such notice in a conspicuous place at the owner's place of business or residence or by placing it under the entrance door at either of such locations or by delivering such notice to a person employed by the owner to work at or to manage or maintain the premises at which the nuisance is located and, in all instances except personal delivery upon such owner by mailing the notice of hearing as follows:

**§28-212.4.1 Mailing to owner's registered address.** To the person registered with the department of housing preservation and development as the owner or agent of the premises, at the address filed with such department in compliance with article two of subchapter four of chapter two of title twenty-seven of the administrative code;

**§28-212.4.2 Mailing to billing address.** To the person designated as owner of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property; or

**§28-212.4.3 Mailing to recorded address.** To the person in whose name the real estate affected by the order of the commissioner is recorded in the office of the city register or the county clerk as the case may be at the address set forth on the recorded instrument.

**§28-212.4.4 Service on corporate owner.** Service may be made on an owner that is a corporation pursuant to section 306 of the business corporation law; however, service upon a corporation shall be deemed to have been completed 45 days following service upon the secretary of state.

**§28-212.4.5 Service on mortgagees.** Service may be made upon mortgagees of record by mailing such notice to the mortgagees at the address set forth on the recorded instrument.

**§28-212.4.6 Service on occupants.** Service may be made upon an occupant by delivering such notice to the occupant or to a person employed by the occupant to work at or to manage or maintain the premises at which the nuisance is located; or by affixing such notice to the premises at which the nuisance is located in a conspicuous place or by placing a copy under the entrance door of such premises and mailing a copy of such notice to the occupant at such premises; and in all instances except personal delivery upon such occupant, by mailing the notice of hearing to the occupant at the premises at which the nuisance is located.

**§28-212.4.7 Proof of service.** Proof of service pursuant to section 28-212.4.1 through 28-212.4.6 shall be filed with the commissioner.

**§28-212.5 Conduct of hearing by office of administrative trials and hearings.** The hearing shall be conducted by the office of administrative trials and hearings. The administrative law judge assigned to hear the matter shall submit his or her proposed findings of fact and recommended decision to the commissioner. If based on such recommended decision, proposed findings of fact, and the record of the hearing the commissioner determines that the building or part thereof or vacant land is a public nuisance, pursuant to this article, the commissioner may issue an order of closure. Such order shall not bar legally required ingress or egress for residential occupancy of parts of the building that are not subject to the order of closure.

**§28-212.6 Lack of knowledge not a defense.** At such hearing it shall not be a defense that the owner, occupant, lessor, lessee, mortgagee, or other person having an interest in the property lacked knowledge of or did not acquiesce or participate in the creation or continuation of the public nuisance.

**§28-212.7 Closure not an act of possession.** A closure ordered by the commissioner pursuant to this article shall not constitute an act of possession, ownership, or control by the city over the closed premises.

**§28-212.8 Posting of order of closure.** An order of closure shall be posted at the building or part thereof or vacant land that is the subject of such order, and shall be mailed to the record owner of such premises, and any record mortgagee at the address for such person set forth in the recorded instrument, and to the person designated as owner or agent of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property. A copy shall also be filed with county clerk or register of the county in which such premises are located. Such filing shall be notice of the order to any subsequent owner and such owner shall be subject to such order.

**§28-212.9 Enforcement of order of closure.** On the tenth business day after the posting of such order and upon the written directive of the commissioner, police officers and authorized employees of the department shall act upon and enforce such order by sealing, padlocking, or otherwise preventing access to the premises in a manner that will not bar legally required ingress or egress for residential occupancy of parts of the building that are not subject to the closure order.

**§28-212.10 Rescission of order of closure.** If at any time after the issuance of such order, the owner, mortgagee, or other person having an interest in the property provides assurance, in a form satisfactory to the commissioner, that the illegal commercial or manufacturing use of the premises has been discontinued and will not reoccur, or such owner, mortgagee, or other person establishes that the premises may be lawfully occupied for such use, the commissioner shall rescind the closure order. If such order is rescinded, the commissioner shall, upon request of such owner, mortgagee, or other person, provide a copy of such rescission, which may be filed with the county clerk or register of the county in which such premises are located. No such re-occupancy shall be permitted without a certificate of occupancy or other department records authorizing such use.

**§28-212.11 Violation of closure order.** It shall be unlawful for any person to use or occupy or to permit any other person to use or occupy any building or part thereof or vacant land that has been sealed, padlocked, or otherwise closed pursuant to an order of the commissioner. It shall be unlawful to mutilate or remove a posted order of the commissioner. Intentional disobedience or violation of any provision of a closure order shall be punishable as an immediately hazardous violation.

**ARTICLE 213  
PENALTY FOR WORK WITHOUT A PERMIT**

**§28-213.1 Department penalty for work without a permit.** In addition to any penalties otherwise authorized by law pursuant to article 202 and the rules of the department, whenever any work for which a permit is required pursuant to this code has been performed without a permit, a penalty shall be imposed by the department as provided in this article.

**§28-213.1.1 Penalty for work without permit on one or two-family dwelling.** Where work has been performed without a permit on a one-family or two-family dwelling the penalty shall equal four times the amount of the fee payable for the permit. Where only part of the work has been performed without a permit, the penalty shall be reduced proportionately according to the amount of work still to be performed at the time a permit is issued. Notwithstanding the foregoing, no such penalty shall be less than five hundred dollars.

**§28-213.1.2 Penalty for work without permit on other than one or two-family dwelling.** The penalty for work without a permit on buildings other than one or two-family dwellings shall be fourteen times the amount of the fee payable for such permit. Where only part of the work has been performed without a permit, the penalty shall be reduced proportionately according to the amount of work still to be performed at the time a permit is issued. Notwithstanding the foregoing, no such penalty shall be less than five thousand dollars.

**§28-213.2 Waiver.** Such penalty and the permit fee shall be payable by the owner of the building on which the unpermitted work was performed. A waiver or reduction of such penalty shall be available to a subsequent bona fide purchaser of the premises pursuant to department rules.

**§28-213.3 Payment of penalty required before issuance of permit.** No permit shall be issued for work described in this article until the penalty assessed by the department pursuant to this article has been paid.

**§28-213.4 Procedure.** The department shall adopt a rule setting forth a procedure for assessment of penalties pursuant to this article.

**ARTICLE 214  
ORDER TO SEAL, SECURE AND CLOSE**

**§28-214.1 Order to seal, secure and close.** If the commissioner determines such action is necessary to the preservation of life and safety the commissioner may order a building subject to a vacate order to be sealed, secured and closed.

**§28-214.1.1 Definition.** For the purpose of this article, “sealed” and “sealed, secured and closed” shall mean the use of any means available to render the building, structure or part thereof inaccessible, including but not limited to the use of a padlock or cinder blocks.

**§28-214.1.2 Hearing.** Such order to seal, secure and close shall contain notice of the opportunity for a hearing with respect to such order to determine if the order was properly issued in accordance with the provisions of this article. Such hearing shall be conducted by the commissioner, or in the commissioner’s discretion, by the office of administrative trials and hearings or the environmental control board. If the matter is referred to such office or board, the hearing officer shall submit his or her findings of fact and a recommended decision to the commissioner. The hearing shall be held within three business days after the receipt of the written request of an owner, lessor, lessee, or mortgagee for such hearing. The commissioner shall render a decision within three business days after such hearing is concluded or findings of fact and a recommendation are submitted.

**§28-214.1.3 Service of seal, secure and close order.** Such order issued pursuant to this article shall be served as follows: It shall be mailed to the record owner of such premises; any record mortgagee of such premises at the address for such person as set forth in the recorded instrument; and if reasonably ascertainable, the person designated as owner’s agent of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property. A copy shall also be filed with the county clerk of the county in which such premises is located. Such filing shall be notice of the order to any subsequent owner and such owner shall be subject to such order.

**§28-214.1.4 Rescission of seal, secure and close order.** An order issued pursuant to this article shall not be rescinded unless the owner, lessor, lessee or mortgagee seeking such rescission provides assurance, in a form satisfactory to the commissioner, that the conditions that caused the issuance of such order have been corrected and will not reoccur. If such order is rescinded, upon the request of the owner, lessor, lessee or mortgagee, the commissioner shall provide a certified copy of such rescission, which may be filed with the county clerk of the county in which such premises is located.

**§28-214.1.5 Expenses of enforcing seal, secure and close orders.** The expenses attending the execution of any and all orders duly made by the department shall respectively be a several and joint personal charge against each of the owners or part owners, and each of the lessees and occupants of the building, structure, enclosure, place or premises to which such order relates, and in respect to which such expenses were incurred; and also against every person or body who was by law or contract bound to do that in regard to such building, structure, enclosure, place or premises which such order requires. Such expenses shall also be a lien on

all rent and compensation due, or to become due, for the use of any building, structure, place or premises, or any part thereof, to which such order relates, and in respect to which such expenses were incurred.

**§28-214.1.6 Notice of seal, secure and close order to community.** The commissioner shall give written notice of the closing of any building, structure, enclosure, place or premises pursuant to this article, and any subsequent actions taken with respect thereto, as soon as practicable, to the borough president of the borough within which the closing has occurred; the council member representing the district within which the closing has occurred; and the local community board. On January first of each year, the commissioner shall submit a report to the council, setting forth the number of closings made in the previous year, the locations of such closings, and the nature and use of the premises closed. The commissioner shall, in addition, as soon as practicable after a building, structure, enclosure, place or premises has been closed, make and publish a report of said closing in a manner calculated to quickly notify the local community in which such closing occurred. The commissioner shall also make and publish a report of any premises reopened pursuant to his or her permission under this article. Failure to comply with this section 28-214.1.6 shall not invalidate any action taken by the commissioner pursuant to this article.

**§28-214.2 Access to sealed premises.** The commissioner shall allow access to the premises sealed, secured and closed pursuant to this article to an owner, or a lessor, lessee or mortgagee upon the following conditions:

1. The submission of a written affirmation, satisfactory to the commissioner, that such person or persons will commence or cause to be commenced without delay all work necessary to correct the conditions stated in the vacate order or otherwise to make the premises meet all applicable laws and rules and will complete such work within a period of time and in a manner to be approved by the commissioner;
2. The submission of a written affirmation or other proof satisfactory to the commissioner describing the steps that have been taken and will be taken in the future to ensure that the premises will be used or operated in a lawful manner and specifying such lawful use;
3. If a license, permit, certificate of operation or certificate of occupancy is necessary for such lawful use, the submission of a written affirmation or other proof, satisfactory to the commissioner, describing the steps that have been taken and will be taken in the future to ensure that such premises will be used or operated in compliance with any law requiring such license, permit, certificate of operation or certificate of occupancy; and
4. If the premises are leased and the person making the affirmations described above in items 1, 2 and 3 is not such lessee, the commissioner may also require any authorized person seeking access to submit a written affirmation or other proof that proceedings to enable such person to take actions necessary to ensure compliance with the affirmations submitted by such authorized person pursuant to items 1, 2 and 3 have been commenced.

**§28-214.3 Additional penalties for harm or injury from violation of order to seal, secure and close.** Notwithstanding any other law, rule, or regulation, any person, corporation, partnership, association or any other legal entity who permits a building, structure, enclosure, place or premises, or any part thereof, to be unlawfully occupied or used in contravention of an order of the commissioner pursuant to this article, or who negligently fails to prevent or prohibit such unlawful occupancy or use, shall be liable for a civil penalty of not more than one million dollars, if any other person suffers serious physical injury, as defined in section ten of the penal law, or death in the building, structure, place or premises or any part thereof subject to such order as a result of such unlawful occupancy or use. If more than one person suffers serious physical injury or death, such penalty shall be recoverable for each person suffering serious physical injury or death. Such penalty shall be recovered in a civil action brought by the corporation counsel in the name of the city in any court of competent jurisdiction. In determining the amount of the civil penalty to be imposed the court shall consider:

1. The extent and severity of injury to persons and property caused by the violation;
2. The history of violations by the defendant at such premises, or any other premises, of laws or rules enforced by the department;
3. The degree of willfulness, recklessness, or negligence displayed by the defendant in committing the subject violation;
4. The defendant's financial resources; and
5. The defendant's good faith efforts to cure the subject violation, including efforts to obtain entry to or possession of the premises in order to do so.

**§28-214.3.1 Payment by city.** In the event that the family of any person seriously injured or who has died as the result of any unlawful occupancy or use described in this section 28-214.3 is unable to collect a judgment recovered in a civil action for personal injury or wrongful death against a defendant who has violated this section 28-214.3 because of the insolvency of such defendant, the city may, in its discretion, pay to such injured person or the family of such deceased person an amount, as hereinafter provided, collected from such defendant in an action relating to the same injury or death commenced by the corporation counsel against such defendant pursuant to this section 28-214.3.1.

**§28-214.3.2 Limitations.** Payments pursuant to section 28-214.3.1 shall be made as a matter of grace and shall be in such amounts and in accordance with such standards and procedures as shall be established by the mayor, provided, however, that any payment made pursuant to section 28-214.3.1 shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which such action is based; loss of earnings or support resulting from such injury; burial expenses not exceeding two thousand five hundred dollars of a person who died

as a result of such unlawful occupancy or use described in this section 28-214.3; and the unreimbursed cost of repair or replacement of articles of essential personal property lost, damaged or destroyed as a direct result of such unlawful occupancy or use. In no event shall the payment made to any person exceed the amount of such person's uncollected judgment for personal injury or wrongful death and in no event shall the total amount paid to any number of persons with such uncollected judgments against a single defendant exceed the actual amount collected by the city from such defendant in an action under this subdivision.

## **ARTICLE 215 EMERGENCY POWERS OF THE COMMISSIONER**

**§28-215.1 Emergency work.** Notwithstanding any other provisions of law, if the commissioner determines that a structure or premises or any part thereof poses an imminent danger of serious physical injury or death to the public or is in imminent danger of collapse and the exigency of the situation is such that any delay may cause further danger to the public safety, then the commissioner may direct the commissioner of housing preservation and development or the department of citywide administrative services, or other authorized agency to perform or arrange the performance of the emergency work on, or demolition of such structure or premises or part thereof or such other work as deemed by the commissioner to make it safe.

**§28-215.1.1 Lien for emergency work.** The expenses of the city in performing emergency work on any structure or part of such structure pursuant to this article shall constitute a debt recoverable from the owner and a lien upon the land and any part of such structure that was not demolished. Every such lien shall have priority over all other liens and encumbrances on the premises except for the lien of taxes and assessments. Except as otherwise provided by rule of the affected agency, the agency incurring such expense shall be governed by the procedures set forth in article eight of subchapter five of the housing maintenance code with respect to the enforcement of such debt and lien against all types of structures, including those authorized to be occupied or otherwise occupied for residential, commercial, and manufacturing purposes.

**§28-215.2 Stopping work and securing structures.** See section 28-207.2.

**§28-215.3 Vacating structures.** See section 28-207.4.

**§28-215.4 Violations of protective measures during construction or demolition.** During the construction or demolition of a structure, the commissioner shall notify the owner of the structure affected of any failure to comply with any of the provisions of this code that concern the protection of life, safety and property during construction or demolition. Unless the owner so notified proceeds immediately to comply with the orders of the commissioner, the commissioner shall have full power to correct the violation. All expenses incurred therefore shall become a lien on the property pursuant to section 28-112.9.

**§28-215.5 Investigation of accidents or other emergency conditions.** When necessary to conduct an investigation of any occurrence affecting building or construction safety, the commissioner may seize or impound equipment, building material, and portions of the affected building or premises for examination and testing. The police department or other authorized law enforcement agency shall cooperate with the commissioner upon request and shall provide a suitable place for the deposit of such items.

**§28-215.6 Closing streets temporarily.** The commissioner may, when necessary for the public safety, temporarily close the sidewalks, streets, structures or places adjacent to a structure or part thereof, and the police commissioner or commissioner of the department of transportation, any of his or her subordinates shall enforce all orders or requirements made by the commissioner, when so requested by the commissioner.

**§28-215.7 Recovery of bodies from wrecked structures.** Where any persons are known or believed to be buried under the ruins of any fallen structure or part thereof in the city, the commissioner shall cause an examination of the premises to be made for the recovery of the injured and bodies of the dead. Whenever, in making such examination, it shall be necessary to remove any debris from the premises, other city agencies shall cooperate with the commissioner in carrying out the purposes of this section 28-215.7, and shall provide suitable and convenient places for the deposit of such debris.

**§28-215.8 Non-compliance with orders; execution of work by department.** Upon the failure to comply with any order of the commissioner within the time limited thereby, and subject to the provisions of article 216, any work required to be executed by such order may be executed by the commissioner through the officers, agents or contractors of the department or other authorized agency; and the city shall be reimbursed promptly for all costs and expenses of such work. Such costs and expenses shall become a lien upon the premises involved and named in the commissioner's order, which may be enforced in accordance with the provisions of section 28-112.9 of this code.

## **ARTICLE 216 UNSAFE BUILDINGS**

**§28-216.1 Conditions constituting an unsafe building or structure.** Any building, structure or part thereof described in this article shall be deemed an unsafe building and shall be demolished or removed or made safe and secure as provided herein.

**§28-216.1.1 Compromised structures.** Any structure or premises or part of a structure or premises that from any cause may at any time become dangerous or unsafe, structurally or as a fire hazard, or dangerous or detrimental to human life, health or safety, shall be demolished and removed or made safe and secure.

**§28-216.1.2 Vacant buildings.** Any vacant building not continuously guarded or not sealed and kept secure against unauthorized entry shall have all openings sealed in a manner approved by the commissioner, and it shall be the duty of the owner thereof promptly to make any repairs that may be necessary for the purpose of keeping such building sealed and secure.

**§28-216.2 Record and notice of unsafe building, structure or premises.** The department shall cause a report to be filed on an unsafe building, structure or premises. The report shall describe the nature of the occupancy of the structure and the nature of the unsafe condition and be made a record of the department.

**§28-216.3 Notice of survey and summons and order.** The owner, executor, administrator, mortgagee, lessee or any other person who may have a recorded vested or recorded contingent interest in the unsafe building, structure or premises, shall be served with a notice of survey and summons containing a description of the unsafe building, structure or premises and an order requiring such building be sealed, secured, repaired, shored, or demolished and removed as may be deemed necessary by the commissioner.

**§28-216.3.1 Content.** Such notice of survey and summons shall require the person thus served immediately to certify to the commissioner his or her acceptance or rejection of the order. The notice of survey and summons shall further notify said person(s) that upon his or her refusal or neglect to comply with any of the requirements of this provision, a survey of the building or premises named in such notice will be made at a time and place therein named. The notice of survey and summons shall also state that if, pursuant to the survey, it is found that the building, structure, or premises referred to therein is unsafe or dangerous by the surveyors, their report of survey will be placed before the supreme court for trial at a time and place named in such notice.

**§28-216.4 Method of service.** The notice of survey and summons and order shall be served in accordance with the civil practice law and rules of the state of New York.

**§28-216.5 Owner abatement of unsafe or dangerous conditions.** If the person served with a notice and order pursuant to section 28-216.4 shall immediately certify his or her assent to the securing or removal of such unsafe building, structure or premises condition, such person shall be allowed a period of time as determined by the commissioner, or his or her designee, within which to commence and complete the abatement of the unsafe or dangerous condition. Such person shall employ sufficient labor and assistance to secure or remove such conditions as expeditiously as possible.

**§28-216.6 Survey.** A survey of the building or premises shall be conducted as follows:

**§28-216.6.1 Identity of surveyors.** The survey shall be made by three competent persons, of whom one shall be the commissioner or his or her designee; another shall be a registered design professional appointed by a recognized professional organization or by the commissioner; and the third shall be a registered design professional appointed by the person served with a notice pursuant to section 28-216.4. If the person served with such notice shall neglect or refuse to appoint such surveyor, the other two surveyors shall make the survey. In case they disagree, they shall appoint a third person to take part in such survey, who shall be a registered design professional of at least 10 years' practice, whose decision shall be final.

**§28-216.6.2 Posting report of survey.** A copy of the report of the survey shall be posted on the structure that is the subject thereof by the persons holding the survey, immediately on their issuing such report.

**§28-216.6.3 Compensation of surveyors.** The registered design professional appointed by the respective professional organization or by the commissioner, as hereinbefore provided, who may act on any survey called in accordance with the provisions of this section 28-216.6, and the third surveyor who may have been called in the case of disagreement provided for in this section 28-216.6, shall each be paid a sum to be determined by rule to be promulgated by the department.

**§28-216.6.4 Cost of survey.** Any costs incurred by the city in connection with the survey shall become money due and owing to the city as part of the return of precept and judgment provided for in section 28-216.9, 28-216.10 and 28-216.11 of this code or pursuant to lien provided for in section 28-112.9 of this code.

**§28-216.7 Court proceeding.** Whenever the report of survey shall recite that the building, structure or premises surveyed is unsafe or dangerous, the corporation counsel or his or her designee shall, at the time specified in the notice, place such notice and report before a justice of the court named in the notice. The report of survey shall be in writing and constitute the issues to be placed before the court for trial. The purpose of the trial shall be to determine whether the unsafe building, structure, or premises shall be vacated and sealed, secured, shored, or demolished and removed.

**§28-216.7.1 Precedence of proceeding.** The unsafe building proceeding shall have precedence over every other business of such supreme court. The trial on the issues in the unsafe building proceeding shall be held without delay, at the time specified in the notice, and shall be held by a justice of the court or by a referee, whose decision or report in the matter shall be final.

**§28-216.7.2 Precept to abate.** If the justice or referee determines the building, structure or premises that is the subject of the report of survey is unsafe or dangerous, such justice or referee trying the case shall immediately issue a precept directed to the commissioner authorizing the commissioner forthwith to vacate pursuant to section 28-207.4, if necessary, and to seal, secure, shore, or demolish and remove the unsafe building, structure or premises named in such report. The precept shall be effective for a period of three years from the date of issuance.

**§28-216.7.3 Notice of pendency.** A notice of pendency shall be filed in accordance with the following procedure:

1. The notice of pendency shall be filed in accordance with the Civil Practice Law and Rules of the State of New York and shall be filed in the office of the clerk of the county where the property affected by such action, suit or proceeding is located. Such notice of pendency may be filed at any time after the service of the notice described in section 28-216.3.
2. Any notice of pendency filed pursuant to the provisions of this section 28-216.7.3 that has not expired may be vacated and cancelled of record upon an order of a justice of the court in which such suit or proceeding was instituted or is pending, or upon the consent in writing of the corporation counsel. The clerk of the county where the notice is filed is hereby directed

and required to mark any such notice of pendency, and any record or docket thereof, as vacated and cancelled of record upon the presentation and filing of a certified copy of such order or consent.

**§28-216.8 Execution of precept.** A precept issued pursuant to section 28-216.7.2 shall be executed in accordance with the procedure set forth in sections 28-216.8.1 through 28-216.8.3.

**§28-216.8.1 Work by the department.** Upon receiving a precept under the provisions of section 28-216.7.2, the commissioner shall execute such precept, as therein directed, and may employ such labor and assistance and furnish such materials as may be necessary for that purpose. The commissioner or his or her designee shall direct the commissioner of citywide administrative services or the department of housing preservation and development or other authorized agency to perform work in accordance with the precept. Such work shall be performed by or under the direction of citywide administrative services in accordance with the provisions of section 4-204 of the administrative code, or the department of housing preservation and development, or such other authorized agency.

**§28-216.8.2 Owner application to perform work.** The owner of such unsafe building, structure, or premises, or any party interested therein, if such person applies to the commissioner immediately upon the issuing of such precept, shall be allowed to perform the requirements of such precept at his or her own cost and expense, if the performance shall be done immediately and in accordance with the requirements of such precept and other applicable laws and rules and such other requirements as the commissioner shall impose.

**§28-216.8.3 Modification of precept.** The commissioner or his or her designee shall have authority to modify the requirements of any precept when such commissioner or designee shall be satisfied that such change will secure the safety of such structure or premises equally well.

**§28-216.8.3.1 Upon application.** The commissioner shall also have authority to modify the requirements of any precept upon application to such commissioner in writing by the owner of the unsafe building, structure, or premises, or such owner's authorized representative. In addition, upon application to modify the requirements of any precept to seal, shore or demolish the structure by the commissioner of housing preservation and development, citywide administrative services or such other authorized agency, the commissioner or designee shall have authority to modify such precept accordingly when the commissioner shall be satisfied that such change will secure the safety of such structure or premises equally well.

**§28-216.8.3.2 Notice.** After a determination to modify the precept is made by the commissioner, written notice of such determination shall be sent by regular mail to the owner and applicant for the modification if other than the owner, at his or her last known address.

**§28-216.8.3.3 Failure of owner to perform work.** If no action in accordance with the modified precept is undertaken by the owner or applicant for modification within the time period provided in the modification following the granting of such application, the commissioner may direct the department of housing preservation and development or the department of citywide administrative services or other authorized agency to execute the original precept, provided however that prior to such execution, notice shall be provided by regular mail to the owner of the unsafe building, structure or premises and applicant for the modification if other than the owner, at his or her last known address. The owner shall continue to have the right to request the commissioner to modify the requirements of the precept prior to the execution thereof.

**§28-216.8.4 Interference prohibited.** It shall be unlawful for any person to interfere, obstruct or hinder the commissioner or the commissioner of citywide administrative services, housing preservation and development, or other authorized agency, or any person who, acting under the authority conferred on such person by such commissioner, in performing the work authorized by a precept issued out of any court or modified in accordance with section 28-216.8.3, or the work ordered by the commissioner in accordance with such precept under the provisions of section 28-216.8.3.3.

**§28-216.8.5 Enforcement.** The police commissioner shall enforce such orders or requirements when requested by the commissioner and shall likewise enforce same at the request of the commissioner of citywide administrative services, housing preservation and development, or other authorized agency, with respect to work performed by or under the direction of such commissioner pursuant to the provisions of section 28-216.8.3.3.

**§28-216.9 Return of precept and reimbursement of city.** Upon compliance with any precept issued to the commissioner in a proceeding under this article, the commissioner may make return thereof, with an endorsement of the action there under and the costs and expenses thereby incurred, to the justice of the court from which such precept issued. Such justice shall then tax and adjust the amount endorsed upon such precept, and shall adjust and allow the disbursements of the proceeding, including but not limited to the preliminary expenses of searches, service of the notice of survey and summons on interested parties, surveys thereof, and costs of executing the precept, which shall be inserted in the judgment in such proceeding. Such justice shall then render judgment for such amount and for the sale of the premises named in such notice, together with all the right, title and interest that the person named in such notice had in the lot, ground or land upon which such structure was placed, at the time of the filing of a notice of pendency in such proceedings, or at the time of the entry of judgment therein, to satisfy such judgment in foreclosure of mortgages. Nothing in this article shall preclude the city from recovering such costs and expenses in any other lawful manner, including pursuant to sections 28-112.9, 28-216.10 and 28-216.11 of this code.

**§28-216.10 Judgment lien.** Any judgment rendered in an action or proceeding instituted under this article shall be and become a lien upon the premises named in such action or proceeding, such lien to date from the time of filing a notice of pendency in the office of the clerk of the county wherein the property affected by such action or proceeding, is located. Every such lien shall have priority before any mortgage or other lien as may exist prior to such filing except tax and assessment liens.

**§28-216.11 Tax lien.** Any costs and expenses incurred by any agency of the city pursuant to this article, including but not limited to the preliminary expenses of searches, service of the notice of survey and summons on interested parties, surveys thereof, and costs of executing the precept, shall be a debt recoverable from the owner of the premises and a lien upon the land and buildings upon or in respect to which such costs and expenses were incurred. Every such lien shall have priority over all other liens and encumbrances on the premises except for the lien of taxes and assessments. Except as otherwise provided by rule of the affected agency, the agency incurring such expense shall be governed by the procedures set forth in article eight of subchapter five of the housing maintenance code with respect to the enforcement of such debt and lien.

#### **ARTICLE 217 BUILDINGS AND STRUCTURES THAT ARE POTENTIALLY COMPROMISED**

**§28-217.1 Buildings and structures that are potentially structurally compromised.** For purposes of this article “potentially compromised” shall include a building or structure that has had an open roof for sixty days or longer, that has been shored and braced or otherwise temporarily safeguarded pursuant to an emergency declaration issued by the commissioner, that has been subject to a precept as a compromised structure under section 216.1.1 of this code or that may have suffered structural damage by fire or any other cause as determined by the commissioner.

**§28-217.1.1 Structural inspections of potentially compromised buildings or structures.** When a building or structure has become potentially compromised, the owner shall cause a structural inspection of such building or structure to be performed. Such inspection shall be performed within 60 days of the opening of the roof, within 60 days of the shoring and bracing or other temporary safeguards pursuant to an emergency declaration, or within 60 days of damage by fire or a determination by the commissioner that the building has suffered structural damage by other cause. A report of such inspection shall be filed with the department within 30 days thereafter in such form and detail and with provision for periodic monitoring of the building or structure as the commissioner may require.

**§28-217.1.2** Structural inspections shall only be performed by a registered design professional in good standing with the New York state department of education.

**§28-217.1.3** If a violation of any applicable statute, law, rule or regulation or any unsafe condition that poses a threat to the structural integrity of the building or to the public is found during the course of such inspection, the registered design professional performing the inspection shall immediately notify the department and the owner of such violation or unsafe condition by calling 311 and in writing.

**§28-217.1.4** An inspection of the buildings and structures subject to the inspection and filing requirements of section 28-216.12 shall be performed every year or, for a specified building or structure, within such other period as determined by the commissioner but not longer than two years, and shall continue until such time as the registered design professional documents and certifies that the building or structure is no longer potentially compromised and such certification is accepted by the commissioner.

**§28-217.1.5** The owner shall hire a registered design professional to perform a structural inspection of buildings and structures subject to section 28-217.1 prior to the issuance of a permit to alter, repair, demolish or enlarge such building or structure, except that the commissioner may waive such inspection if a structural inspection of the entire building or structure has been performed within the prior year.

**§28-217.1.6** Any owner of a building or structure shall notify the department in writing that such building or structure has become potentially compromised immediately after such owner knows or should have known of the condition. Such notice shall contain the name and business address of the owner of record of such building or structure and shall identify the building or structure by street address and tax block and lot. The notices required by this subdivision shall be in such form and manner as established by the commissioner by rule.

**§28-217.1.7** If an owner subject to the inspection and filing requirements of this section fails to file such report, the owner shall be liable for a civil penalty in an amount not less than two thousand dollars. In such a case, the department may cause a structural inspection to be conducted and a report filed.

#### **ARTICLE 218 SAFETY COMPLIANCE OFFICER**

**§28-218.1 Definition.** For purposes of this article, the terms "Safety Compliance Officer" and "SCO" shall mean a person whose presence is required by the commissioner pursuant to section 28-218.2 and who satisfies the qualifications of section 28-218.4.

**§28-218.2 Safety Compliance Officer.** In addition to any other remedies or penalties authorized by law, the commissioner in his or her discretion may require the presence of a SCO at any permitted site that has received immediately hazardous violations that the commissioner determines adversely affect public safety and require the presence of a SCO to protect public safety. In any circumstance where a SCO is required, the commissioner shall state in writing the circumstances necessitating the SCO, and the duration of the compliance monitoring and/or conditions that must be satisfied prior to the termination of the compliance monitoring.

**§28-218.3 Compliance monitoring.** The SCO shall monitor the operations related to the circumstances and conditions that the commissioner has identified pursuant to section 28-218.2 until the areas of concern set forth by the commissioner have been addressed as determined by the commissioner, but in no case shall any monitoring period exceed ninety days. For such purpose, the SCO and his or her employees shall be designated as authorized representatives of the commissioner with authority pursuant to

section 28-103.13 of this code to enter upon and examine and inspect at all reasonable times any site, building or structure. In the event that the conditions set-out in the commissioner's determination, pursuant to section 28-218.2, to require a SCO have not been satisfied within the prescribed monitoring period, the commissioner may appoint another SCO, who shall be a different SCO than the initial SCO, to monitor operations for an additional period not to exceed ninety days.

**§28-218.4 Qualifications.** Safety Compliance Officers shall have experience in supervising the construction operations being monitored. They shall be an architect or engineer who has experience supervising construction projects in New York City, a licensed site safety manager or coordinator or other licensee of the department, or a special inspector as provided for in article 115 of this title. Safety Compliance Officers shall carry insurance as required by the department.

**§28-218.5 Cost of a Safety Compliance Officer.** The owner of the site where the services of the SCO have been required shall reimburse the department for all direct costs and any related administrative expenses incurred by the department in the operation of the SCO program provided for in this article. Reimbursement shall be made at such times as the department shall require, but in any event, before a temporary or permanent certificate of occupancy is issued for the building or structure that is being monitored. No permit shall be issued for the job site at which a SCO has been assigned if reimbursements for the cost of the monitor are outstanding for more than thirty days. The department shall adopt rules establishing a process for the resolution of disputes concerning the costs of the SCO.

**§28-218.6 The SCO shall document with photographs or other means any violation of the code.** The SCO shall submit an interim report, to be submitted at the midpoint of the appointment period, and a final report to the department in the manner and form prescribed by the commissioner. The department will share the results of these reports with the general contractor and provide the general contractor an opportunity to comment.

**§28-218.7 Records.** The SCO shall keep and maintain records relating to the services performed on behalf of the department in such manner and for such period of time as shall be established by the commissioner by rule or by direction of the commissioner.

## ARTICLE 219

### FAILURE TO CERTIFY CORRECTION OF CERTAIN IMMEDIATELY HAZARDOUS VIOLATIONS

**§28-219.1 Department penalty for failure to certify correction.** In addition to any penalties otherwise authorized by law pursuant to article 202 and the rules of the department, whenever any person fails to submit certification of correction of an immediately hazardous violation that poses a threat of imminent danger to public safety or property, as required by an order issued pursuant to section 28-204.2, a penalty shall be paid to the department in the amount of not less than one thousand five hundred dollars or more than five thousand dollars. No permit or certificate of occupancy shall be issued and no stop work order may be rescinded at the property named in the order 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 this chapter.

**§28-219.2 Reinspection.** Where an immediately hazardous condition has been identified as posing a threat of imminent danger to public safety or property and a violation has been issued, the commissioner shall re-inspect the condition that gave rise to the violation within 60 days of the date of the notice of a violation, unless:

1. A certification of the correction of the condition has been filed in the manner and form prescribed by the department;
2. The person to whom the violation has been directed has obtained an extension of time for filing the certificate of correction of the violation from the commissioner in accordance with section 28-204.4 and with any applicable rules of the department, and said extension of time to file has not yet expired; or
3. The condition has been corrected in the presence of the commissioner.

**§28-219.2.1 Continued noncompliance.** If, upon re-inspection, the commissioner determines the condition continues to pose a threat of imminent danger to public safety or property, and the person against whom the initial violation was directed is not in compliance with section 28-204.4, the commissioner shall issue an appropriate violation and shall issue a stop-work order, pursuant to section 28-207.2, or the commissioner shall, if the commissioner is unable to obtain access to the premises, request the corporation counsel to institute legal proceedings to compel correction of the violation and abate the condition or take such other action as is appropriate.

**§28-219.2.2 Inspections by the commissioner.** The commissioner shall continue to re-inspect any condition that has given rise to an immediately hazardous violation that poses a threat of imminent danger to public safety or property every 60 days, and shall follow the procedures described in items 1, 2 and 3 of section 28-219.2 until the condition has been found by inspection or certification to be corrected or abated.

**§28-219.3 False certifications of correction.** It shall be unlawful to prepare, file or offer for filing a certification of correction of an immediately hazardous condition, knowing that such certification contains a false statement or false information. Any person who prepares such a certificate shall be subject to prosecution under section 175.05 or 175.10 of the penal law. Any person who files such a certificate or offers such a certificate for filing shall be subject to prosecution under section 175.30 or 175.35 of the penal law. Nothing in this section shall be construed to limit, alter or affect the authority conferred by any other provision of this chapter or other law to bring criminal, civil or administrative actions or proceedings or other remedies for the preparation, filing or offering for filing of a certification of correction of an immediately hazardous condition containing a false statement or false information.

**\*§28-219.4 Notice to the department of housing preservation and development for certain elevator-related violations.** If, upon reinspection of an immediately hazardous violation relating to an elevator that services one or more dwelling units in a multiple

dwelling, the department determines that such owner has failed to correct the condition constituting such violation then the commissioner shall refer such violation, within one week of such reinspection, to the commissioner of housing preservation and development for a determination as to whether such violation is dangerous to human life and safety or detrimental to health pursuant to section 27-2125 of the housing maintenance code. If the department knows or has reason to believe that any such unit is not served by another operable elevator, the department shall include such information and any other relevant information in such referral. The department may continue enforcement action against the owner of the multiple dwelling after referral of such violation to the commissioner of housing preservation and development. Where the owner begins to take corrective action, the department shall notify the commissioner of housing preservation and development of such efforts. The department shall notify an owner of the referral of any such violation to the commissioner of housing preservation and development for action under this section.

**Exceptions:**

1. Elevators located in owner-occupied multiple dwellings that service only the owner-occupied dwelling unit, provided that such unit is not occupied by boarders, roomers, or lodgers.
2. Elevators located within convents and rectories that are not open to non-occupants on a regular basis.

*\*Section 28-219.4 was added by [Local Law 101 of 2015](#). This law has an effective date of July 1, 2016.*

## CHAPTER 3

# MAINTENANCE OF BUILDINGS

### ARTICLE 301 GENERAL

**§28-301.1 Owner's responsibilities.** All buildings and all parts thereof and all other structures shall be maintained in a safe condition. All service equipment, means of egress, materials, devices, and safeguards that are required in a building by the provisions of this code, the 1968 building code or other applicable laws or rules, or that were required by law when the building was erected, altered, or repaired, shall be maintained in good working condition. Whenever persons engaged in building operations have reason to believe in the course of such operations that any building or other structure is dangerous or unsafe, such person shall forthwith report such belief in writing to the department. The owner shall be responsible at all times to maintain the building and its facilities and all other structures regulated by this code in a safe and code-compliant manner and shall comply with the inspection and maintenance requirements of this chapter.

**§28-301.2 Filing of reports in writing or electronically.** Reports required to be filed under this chapter shall be filed in writing or electronically as the commissioner may require.

### ARTICLE 302 MAINTENANCE OF EXTERIOR WALLS

**§28-302.1 General.** A building's exterior walls and appurtenances thereof shall be maintained in a safe condition. All buildings greater than six stories shall comply with the maintenance requirement of this article.

**Exception:** The requirements imposed by this article shall not apply to any part of an exterior wall that is less than 12 inches (305 mm) from the exterior wall of an adjacent building.

**§28-302.2 Inspection requirements.** A critical examination of a building's exterior walls and appurtenances thereof shall be conducted at periodic intervals as set forth by rule of the commissioner, but such examination shall be conducted at least once every five years. No later than January 1, 2009 the commissioner shall by rule establish staggered inspection cycles for buildings required to comply with this section. The initial examination for a new building shall be conducted in the fifth year following the erection or installation of any exterior wall and/or appurtenances as evidenced by the issuance date of a temporary or final certificate of occupancy or as otherwise prescribed by rule.

1. Such examination shall be conducted on behalf of the building owner by or under the direct supervision of a registered design professional with appropriate qualifications as prescribed by the department.
2. Such examination shall include a complete review of the most recently prepared report and an inspection.
3. Such examination shall be conducted in accordance with rules promulgated by the commissioner.

**§28-302.3 Immediate notice of unsafe condition.** Whenever a registered design professional learns of an unsafe condition through a critical examination of a building's exterior walls and appurtenances thereof, such person shall notify the owner and the department immediately in writing of such condition.

**§28-302.4 Report of critical examination.** The registered design professional shall submit a written report to the commissioner within 60 days of completing the critical examination, but not more than five years following submission of the preceding report of critical examination, certifying the results of such critical examination as either safe, unsafe or safe with a repair and maintenance program. The report shall clearly document the condition of the exterior walls and appurtenances thereof and shall include a record of all significant deterioration, unsafe conditions and movement observed as well as a statement concerning the watertightness of the exterior surfaces. Such report must be professionally certified by such registered design professional.

**§28-302.5 Repair of exterior walls, unsafe condition.** Upon the notification to the department of an unsafe condition, the owner, the owner's agent or the person in charge shall immediately commence such repairs, reinforcements or other measures as may be required to secure public safety and to make the building's exterior walls or appurtenances thereof conform to the provisions of this code.

1. All unsafe conditions shall be corrected within 90 days of filing the critical examination report.
2. The registered design professional shall reinspect the premises and file an amended report within two weeks after the repairs have been completed certifying that the unsafe conditions of the building have been corrected.
3. The commissioner may grant an extension of time of up to 90 days to complete the repairs required to correct an unsafe condition upon receipt and review of an initial extension application submitted by the registered design professional together with such additional documentation as may be prescribed by rule.

4. The commissioner may grant further extensions of time to complete the repairs required to remove an unsafe condition upon receipt and review of an application for a further extension submitted by the registered design professional together with such further documentation as may be prescribed by rule.

**§28-302.6 Safe condition with a repair and maintenance program.** The registered design professional shall not file a report of a safe condition with a repair and maintenance program for the same building for two consecutive filing periods unless the second such report is accompanied by his or her professional certification attesting to the correction of all conditions identified in the prior report as requiring repair.

### **ARTICLE 303 PERIODIC BOILER INSPECTIONS**

**§28-303.1 General.** Periodic boiler inspections shall be performed in accordance with this article.

**§28-303.2 Annual inspections.** Except as otherwise provided in this article, each owner of a boiler, as defined in section 204 of the New York state labor law, excepting those boilers listed in subdivision five of such section of such labor law, shall have such boiler inspected at least once a year in accordance with this article. All individuals who perform periodic inspections pursuant to this article shall be qualified under section 204 of the New York state labor law and the rules promulgated by the commissioner of labor or the commissioner of buildings.

**§28-303.2.1 Internal inspection required.** All high pressure boilers shall have an annual internal inspection performed in accordance with section 204 of New York state labor law and the rules of the department. Where construction of a low pressure boiler allows, an internal inspection shall be performed on a periodic schedule in accordance with section 204 of the New York state labor law and the rules of the department.

**§28-303.2.2 External inspection required.** All high and low pressure boilers shall have an annual external inspection performed in accordance with section 204 of New York state labor law and the rules of the department. Such inspection shall include chimney connectors.

**§28-303.3 Qualifications of boiler inspectors.** All individuals who perform periodic inspections pursuant to this article shall have the qualifications set forth in section 28-303.3.1 or section 28-303.3.2, as applicable.

**§28-303.3.1 High-pressure boilers.** Inspections required by section 28-303.2 of a high-pressure boiler must be performed, in accordance with the rules of the department, on behalf of the owner, by boiler inspectors in the employ of a duly authorized insurance company who are qualified in accordance with section 204 of the New York state labor law.

**§28-303.3.2 Low-pressure boilers.** Inspections required by Section 28-303.2 of a low-pressure boiler must be performed, in accordance with the rules of the department, on behalf of the owner, by boiler inspectors who are qualified in accordance with section 204 of the New York state labor law.

**§28-303.4 Staggered inspection cycles.** The commissioner may by rule establish staggered inspection cycles for buildings required to comply with this article.

**§28-303.5 Repair of defects.** The owner of each boiler that is subject to periodic inspection shall correct any defects identified in the annual boiler inspection.

**§28-303.6 Reporting an unsafe or hazardous condition.** If an inspection reveals that any boiler is unsafe or hazardous to life and safety, the device is to be immediately taken out of service by the agency performing the inspection and the building owner notified. Such agency shall notify the department of the unsafe or hazardous condition of the boiler within 24 hours after the condition is discovered. Notification to the department may be made by telephone, electronically or in writing.

**§28-303.7 Owner's annual boiler inspection report.** The owner of each boiler that is subject to inspection pursuant to section 28-303.2 shall file a signed annual report with the commissioner in accordance with the rules of the department within 45 days after the required annual inspection of the boiler has been performed. Extensions of time to file such report may be granted in accordance with the rules of the department. The report shall include, but shall not be limited to:

1. The location of the boiler.
2. The name and address of the inspector, the qualification of the inspector to perform the inspection, the date of inspection and if the inspector is a qualified boiler inspector in the employ of a duly authorized insurance company, the policy number covering the boiler.
3. A list of all defects found in the inspection for each device inspected.

**§28-303.7.1 Affirmation of correction.** The owner must file an affirmation that all defects identified in the annual boiler inspection report have been corrected. Such affirmation must be filed with the department within 120 days after the date of filing of the report.

**§28-303.8 Scope of inspection.** During required inspection and testing, in addition to any other requirements prescribed by this code or the rules of the department, all parts of the equipment shall be inspected to determine that they are in safe operating condition and that parts subject to wear have not worn to such an extent as to affect the safe and reliable operation of the boiler.

**§28-303.9 Removal or discontinuance notice.** The owner of a boiler that is removed or discontinued from use shall file a written notice of such removal or discontinuance with the commissioner within 30 days of the date of removal or discontinuance.

**§28-303.10 Additional inspections.** In addition to the inspections required by this article, the commissioner may make such additional inspections as required to enforce the provisions of this code.

**§28-303.11 Fees.** The owner of each boiler subject to periodic inspection pursuant to this article shall pay to the department an annual fee for each boiler in the amount prescribed by this code to cover the city's administrative and supervisory costs. The fee shall be payable at the time of the filing of the owner's annual boiler inspection report. No fee shall be charged for additional inspections made by the department pursuant to section 28-303.10.

## **ARTICLE 304 ELEVATORS AND CONVEYING SYSTEMS**

**§28-304.1 General.** Elevators and conveying systems shall be maintained in a safe condition and in accordance with ASME A17.1, as modified by appendix K of the New York city building code. Every new and existing elevator or conveying system shall be inspected and tested in accordance with this article.

**§28-304.2 Elevators, escalators, moving walkways, material lifts, man lifts and dumbwaiters.** Elevators, escalators, moving walkways, material lifts, man lifts and dumbwaiters shall be inspected and tested in accordance with the schedule set forth in Table N1 of ASME 17.1 as referenced in chapter 35 and as may be modified in chapter 30 and appendix K of the New York city building code ("Table N1").

**Exception:** Elevators located in one-family, two-family or multiple-family dwellings that service only a single owner-occupied dwelling unit which is not occupied by boarders, roomers or lodgers, and elevators located within convents and rectories that are not open to non-occupants on a regular basis are not subject to periodic inspection requirement of such reference standard. Inspections and tests shall be performed in accordance with Table N1.

**§28-304.3 Chair lifts, stairway chair lifts and vertical reciprocating conveyors (VRCs).** Chair lifts, stairway chair lifts and VRCs shall be inspected and tested at intervals not exceeding one year. Inspections and tests shall be performed in accordance with Table N1.

**§28-304.4 Amusement devices.** Amusement devices shall be inspected and tested in accordance with department rules.

**§28-304.5 Frequency of inspection and testing.** Elevators and other conveying systems may be subject to more frequent inspection and testing as the commissioner finds necessary to protect public safety.

**§28-304.6 Inspection and testing process.** All devices shall be inspected and tested in accordance with Table N1 and, where applicable, department rules and with sections 28-304.6.1 through 28-304.6.6.

**§28-304.6.1 Inspection and testing entities.** The required periodic inspections in Table N1 shall be made by the department. The other tests and inspections in Table N1 shall be performed on behalf of the owner by an approved agency in accordance with this code and department rules. Where indicated in Table N1, tests and inspections shall be witnessed by an approved agency not affiliated with the agency performing the test. Not affiliated, as used in this section, shall mean the approved agency owners, directors and inspectors shall be independent of all relative approved agencies, maintenance firms or other entities providing any associated services to the device owner. Such other tests and inspections shall comply with the timeframes established as follows:

1. Category 1 inspections and tests shall be performed between January 1<sup>st</sup> and December 31<sup>st</sup> of each year at a minimal time interval of six months from the date of the previous Category 1 testing. Category 1 tests are required on new installations the calendar year following final acceptance test.
2. Category 3 inspections and tests for water hydraulics shall be performed every three years on or before the anniversary month of the last Category 3 testing.
3. Category 5 inspections and tests shall be performed every five years on or before the month of the final acceptance test for new elevators or the anniversary month of the last Category 5 testing.

**§28-304.6.1.1 Department notification.** The department shall be notified by the performing agency at least seven days prior to the Category 1 testing of escalators, Category 3 testing of water hydraulic elevators and Category 5 testing of elevators pursuant to the rules of the department.

**§28-304.6.2 Scope.** During periodic inspection and testing, in addition to any other requirements prescribed by this code, all parts of the equipment shall be inspected to determine that they are in safe operating condition and that parts subject to wear have not worn to such an extent as to affect the safe and reliable operation of the installation.

**§28-304.6.3 Reporting an unsafe or hazardous condition.** If an inspection or test reveals that any elevator or other conveying system is unsafe or hazardous to life and safety, the device is to be taken out of service immediately by the agency performing the inspection or test and the building owner notified immediately. The performing agency shall notify the department by telephone, electronically or in writing within 24 hours.

**§28-304.6.4 Field inspection report and notation on the inspection certificate.** Field inspection reports and notifications on the

inspection certificate shall comply with the requirements of sections 28-304.6.4.1 and 28-304.6.4.2.

**§28-304.6.4.1 When no witnessing agency is required.** When no witnessing agency is required to witness inspections and tests under Table N1, the performing inspector shall, on the day of each inspection and test: (i) complete the field inspection and test report, documenting all violating conditions, if any, and affix his or her signature; (ii) provide a copy of such report to the owner or owner's representative; and (iii) affix the inspection date and his or her signature over a stamp identifying his or her approved agency and his or her approval number on the inspection certificate issued by the department attesting to completion of items (i) and (ii).

**§28-304.6.4.2 When a witnessing agency is required.** When a witnessing agency is required to witness inspections and tests under Table N1, the performing inspector shall, on the day of each inspection and test complete the field inspection and test report, documenting all violating conditions, if any, and affix his or her signature. The witnessing agency inspector shall, on the day of each inspection and test: (i) review and confirm the field inspection report and also affix his or her signature to it; (ii) provide a copy of such report to the owner or owner's representative; and (iii) affix the inspection date and his or her signature over a stamp identifying his or her approved agency and his or her approval number on the inspection certificate issued by the department attesting to the completion of items (i) and (ii).

**§28-304.6.5 Inspection and test reports submission.** Inspection and test reports shall be submitted to the department on such forms and in such manner as required by the commissioner. Such reports shall comply with the following and department rules:

1. The inspection and test reports shall contain signatures of (i) the performing agency inspector and director, (ii) the witnessing agency inspector and director, and (iii) the building owner.
2. The completed inspection and test reports, with all applicable signatures, shall be delivered to the owner by the approved performing and/or witnessing agency within 30 days of the test listing all violating conditions for each device tested, and filed with the department within 60 days after the date of the test by the owner or its authorized designee.

**Exception:** Inspection and test reports are not required to be submitted to the department for private residence wheelchair lifts and private residence dumbwaiters devices. However, the owner shall maintain an inspection and test log to be available to the department upon request.

**§28-304.6.6 Repair.** All defects as found in such inspection and test reports shall be corrected within 120 days after the date of inspection and test, except all hazardous conditions shall be corrected immediately. An affirmation of correction shall be filed within 60 days of the date of correction.

**§28-304.7 Required contract.** The owner of all new and existing passenger elevators and escalators shall have a contract with an approved agency to perform elevator and escalator maintenance, repair and replacement work as defined by ASME A17.1 as modified by chapter K1 of appendix K of the New York city building code. The name, address and telephone number of such agency shall be maintained at each premises, on the mainline disconnect switch and in a location readily accessible to employees of the department and to maintenance and custodial staff at the premises.

**§28-304.8 Fees.** Every owner of elevators and other devices shall pay to the department an inspection fee and a report filing fee for each elevator or device in the amount prescribed by this code.

**§28-304.9 Additional inspections.** The commissioner may make such additional inspections as required to enforce the provisions of this code. No fee shall be charged for such additional inspections.

**\*§28-304.10 Occupant notification for elevator work.** In occupancy groups R-1 and R-2, when an elevator is to be out of service, a notice identifying the type of work to be performed and the expected start and end dates for such outage shall be provided in English, Spanish, and such other languages as the department may provide by rule, in accordance with sections 28-304.10.1 and 28-304.10.2.

*\*Section 28-304.10 was amended by: [Local Law 47 of 2015](#). This law has an effective date of September 30, 2015.*

**\*§28-304.10.1 Occupant notification for alteration work.** When an elevator is to be out of service for alteration work, notice shall be given to the residential occupants no fewer than 10 business days before the start of the work, except in the case of emergency repairs. This notification requirement does not apply to minor alterations and ordinary repairs.

*\*Section 28-304.10 was added by: [Local Law 47 of 2015](#). This law has an effective date of September 30, 2015.*

**\*§28-304.10.2 Occupant notification for other elevator service outages.** When all elevators servicing a building or any section of a building are expected to be out of service for two or more hours, notice shall be posted at least twenty-four hours before the start of the work. When all elevators servicing a building or any section of a building are expected to be out of service for less than two hours, or are out of service as the result of emergency work, notice is not required to be posted, except that where such outage lasts for two or more hours, notice shall be posted as soon as practicable after the commencement of such service outage.

*\*Section 28-304.10 was added by: [Local Law 47 of 2015](#). This law has an effective date of September 30, 2015.*

**ARTICLE 305**  
**RETAINING WALLS, PARTITION FENCES AND OTHER SITE STRUCTURES**

**§28-305.1 Retaining walls, partition fences and other site structures.** In addition to the requirements set forth in chapter 33 of the New York city building code, the responsibility for maintaining and repairing retaining walls, partition fences and other site structures shall be in accordance with sections 28-305.1.1, 305.1.2, and 305.4.

**§28-305.1.1 Structures located on the lot line of adjacent properties and partially on both properties.** The owners of adjacent properties shall be responsible jointly for the proper maintenance and repair of retaining walls, partition fences and other site structures, or portions thereof, that are located along the common lot line and on both their properties; and each such owner shall be responsible for one-half of the costs of maintaining and repairing such fences, retaining walls and other site structures, or such portions thereof. Where an owner elects to remove temporarily a retaining wall or partition fence that is required to support a grade differential between the two properties, or for any other reason is required by this code, such owner shall protect the adjacent property, shall not impair its safe use, and shall replace the retaining wall or partition fence at his or her own cost. Refer to chapter 33 of the New York city building code for additional requirements during construction and demolition operations.

**§28-305.1.2 Structures located entirely on one property.** Where such retaining walls, partition fences or other site structures, or portions thereof, are located entirely on one property, the owner of such property shall be wholly responsible for the proper maintenance and repair of the retaining wall, partition fence or other site structure. If, however, the proper maintenance and/or repair of such retaining wall, partition fence or other site structures requires access to the adjoining property, the owner of such adjoining property shall allow such access. Refer to chapter 33 of the New York city building code for additional requirements during construction and demolition operations.

**§28-305.2 Retaining walls required.** Hereafter, when an owner elects to set his or her grade either higher or lower than the grade of an adjoining property at the property line, such owner shall erect, maintain and repair a retaining wall of sufficient height, structure and foundation to support such grade differential, and with proper drainage, in accordance with this code, such that the adjacent property is not impacted, and shall do so at the sole expense of such owner and entirely on the property of such owner without access to the adjoining property.

**§28-305.3 Special agreement.** Nothing in this article shall be construed to prevent the owners of adjacent properties from making or enforcing by private action special agreements with respect to maintenance or repair of retaining walls, partition fences and other site structures or access to adjoining property for such purpose.

**§28-305.4 Maintenance, inspection and repair of retaining walls.** Maintenance, inspection and repair of retaining walls shall comply with sections 28-305.4.1 through 28-305.4.8.

**§28-305.4.1 Definition.** As used in this article, the following term shall have the following meaning:

**RETAINING WALL.** A wall that resists lateral pressures and limits lateral displacement caused by soil, rock, water or other materials, except that basement and vault walls that are part of a building, underground structures, including but not limited to utility vault structures, tunnels, transit stations and swimming pools, shall not be considered retaining walls.

**§28-305.4.2 Owner's responsibility.** Owners of retaining walls with a height of ten feet or more and fronting a public right-of-way shall comply with the requirements of this section. For the purposes of this section, the height of a retaining wall shall be the distance from the top of the ground in front of the wall to the top of the wall stem, or wall step for stepped walls, including any parapets or fencing capable of retaining material.

**§28-305.4.3 Condition assessment requirements.** A condition assessment of a retaining wall shall be conducted at periodic intervals as set forth by rule of the commissioner, but such assessment shall be conducted at least once every 5 years. The commissioner may establish staggered assessment cycles for retaining walls required to comply with this section.

**§28-305.4.3.1 Registered design professional.** The condition assessment shall be conducted on behalf of the owner by or under the direct supervision of a registered design professional with appropriate qualifications as prescribed by the department.

**§28-305.4.3.2 Department rules.** The condition assessment shall be conducted in accordance with rules promulgated by the commissioner.

**§28-305.4.4 Report of condition assessment.** A report of condition assessment shall be submitted to the department in accordance with sections 28-305.4.4.1 and 28-305.4.4.2.

**§28-305.4.4.1 Submission deadlines.** Except as otherwise provided in section 28-305.4.6, the registered design professional shall submit a written report to the commissioner within 60 days of completing the assessment, but not more than 5 years following submission of the preceding report of assessment, certifying the results of the assessment.

**§28-305.4.4.2 Contents.** The report shall certify the results of the assessment as either safe, safe with minor repair or safe with repair and/or engineering monitoring, as prescribed by rules of the department. The report shall clearly document the condition of the retaining wall and shall include a record of all significant deterioration, potentially unsafe conditions of the wall or affecting the wall, and movement observed. The report must be certified by the registered design professional.

**§28-305.4.5 Fees.** Every owner of a retaining wall shall pay to the department a report filing fee for each report of condition assessment in the amount prescribed by this code.

**§28-305.4.6 Immediate notice of unsafe condition.** Whenever the registered design professional under whose supervision the inspection is performed learns of an unsafe condition through a condition assessment of a retaining wall, such person shall notify the owner and the department of such condition immediately by calling 311 and by written notification to the department.

**§28-305.4.7 Repair of unsafe condition.** Upon the notification to the department of an unsafe condition, the owner or the owner's agent shall immediately commence such repairs, reinforcements or other measures as may be required to secure public safety.

**§28-305.4.7.1 Permit.** The owner or the owner's agent shall obtain a permit within the time set forth in the rules of the department in order to correct the unsafe condition, after securing public safety as provided above.

**§28-305.4.7.2 Monitoring.** The owner or the owner's agent shall monitor the protection of public safety until the unsafe condition is remedied.

**§28-305.4.7.3 Reinspection.** The owner or the owner's agent shall reinspect the retaining wall and file an amended report within two weeks after the repairs have been completed certifying that the unsafe conditions of the retaining wall have been corrected.

**§28-305.4.7.4 Extension.** The commissioner may grant an extension of time of up to 90 days from the date of the application for an extension to complete the repairs required to correct an unsafe condition upon receipt and review of an initial extension application submitted by the registered design professional together with such additional documentation as may be prescribed by rule.

**§28-305.4.7.5 Further extension.** The commissioner may grant further extensions of time to complete the repairs required to remove an unsafe condition upon receipt and review of an application for a further extension submitted by the registered design professional together with such further documentation as may be prescribed by rule.

**§28-305.4.8 Safe with repair and/or engineering monitoring.** A retaining wall or any part thereof that may pose a potential danger to persons or property, but does not require immediate action shall be rated safe with repair and/or engineering monitoring. This condition requires further investigation and timely remedial action to prevent its deterioration into an unsafe condition. A registered design professional shall be responsible for appropriately monitoring the wall until the repair is completed.

**§28-305.4.8.1 Safe with repair and/or engineering monitoring for two cycles.** The registered design professional shall not file a report of safe with repair and/or engineering monitoring for the same retaining wall for 2 consecutive filing periods unless the second such report is accompanied by his or her professional certification attesting to the correction of all conditions identified in the prior report as requiring repair.

## **ARTICLE 306 PARTY WALLS**

**§28-306.1 Responsibility for party walls.** Repair and maintenance of the construction, design and fire-resistance rating of party walls shall be the joint responsibility of the owners of the adjoining properties, and any change by either owner must maintain the weather protection, structural, vertical fire division and other requirements of this code for party walls.

**§28-306.2 Safeguards during construction or demolition.** Refer to section BC 3309 of the New York city building code for additional requirements for the maintenance of party walls during construction or demolition operations.

## **ARTICLE 307 WORKPLACE EXITS**

**§28-307.1 Obstruction of workplace exits prohibited.** Except for the exemptions specified in subdivision j of section 27-37 1 of the administrative code or chapter 10 of the New York city building code, as applicable, it shall be unlawful for an employer or the agent of an employer to lock the doors of a workplace or otherwise obstruct or prohibit exit from a workplace when such act may endanger the health or safety of any employee, independent contractor or other individual in such workplace in the event of a fire or other hazardous condition or event. The commissioner shall classify a violation of this section as an immediately hazardous violation. Notwithstanding any other provision of this code, upon criminal conviction or civil adjudication of liability for a violation of this section an additional fine or civil penalty of not less than five thousand dollars nor more than twenty thousand dollars shall be

imposed for each employee, independent contractor or other individual endangered by a violation of this section.

**§28-307.1.1 Notice.** A sign shall be posted conspicuously at the workplace of a person convicted of or found liable for a violation of section 28-307.1. Such sign shall, in English, Spanish, Korean, Chinese or any other language directed by the fire commissioner, provide notice to employees of the acts prohibited by section 28-307.1 and of the remedies for employer retaliation as set forth in section 28-307.3. The sign shall be in a form and posted in a manner directed by the fire commissioner and may contain any other information deemed necessary by the fire commissioner or as recommended by the police commissioner or the commissioner. The fire commissioner may, in the interest of public safety, adopt a rule requiring the posting of such signs at other workplaces.

**§28-307.2 Unannounced inspections of workplaces by fire department.** In addition to any other inspections required by law or rule, the fire department shall conduct a minimum of fifty unannounced workplace inspections annually to ensure the identification and abatement of any hazardous conditions in violation of section 28-307.1. Such inspections shall include, but not be limited to, sites where there are known or suspected conditions affecting employee safety and health.

**§28-307.3 Retaliation.** It shall be unlawful for an employer or the agent of such employer to take a retaliatory action, as defined by section 740 of the labor law, against an employee because of the lawful acts of such employee in furtherance of a civil or criminal enforcement proceeding arising out of the failure of such employer or agent to comply with section 28-307.1. An employee who is the victim of such retaliatory action may commence an action in any court of competent jurisdiction for the relief provided for in this section and shall be entitled to all relief necessary to make such employee whole. Lawful acts of an employee shall include, but not be limited to, assisting in the investigation and initiation of an enforcement proceeding alleging a violation of section 28-307.1, providing testimony in any such proceeding or providing other assistance in connection therewith. The relief to which such employee shall be entitled shall include, but not be limited to, (i) an injunction to restrain any adverse or retaliatory action, (ii) reinstatement to the position such officer or employee would have had but for such action, or to an equivalent position, (iii) reinstatement of full benefits and seniority rights including payment of any missed back pay, plus interest and (iv) compensation for any special damages sustained as a result of such action, including litigation costs and reasonable attorneys' fees.

## **ARTICLE 308 ENERGY AUDITS AND RETRO-COMMISSIONING OF BASE BUILDING SYSTEMS**

**§28-308.1 Definitions.** As used in this article, the following terms shall have the following meanings:

**BASE BUILDING SYSTEMS.** The systems or subsystems of a building that use energy and/or impact energy consumption including:

1. The building envelope.
2. The HVAC (heating ventilating and air conditioning) systems.
3. Conveying systems.
4. Domestic hot water systems.
5. Electrical and lighting systems.

**Exception:** The term "base building systems" shall not include:

1. Systems or subsystems owned by tenants (other than a net lessee for a term of 49 years or more, inclusive of renewal options), condominium unit owners or cooperative unit shareholders, or a system or subsystems for which a tenant bears full maintenance responsibility and that is within the tenant's leased space and/or exclusively serves such leased space.
2. Industrial processes that occur within a covered building.

**BUILDING MANAGEMENT SYSTEM.** A computer-based system that monitors and controls a building's mechanical and electrical equipment, such as HVAC, lighting, power, fire, and security systems, including, at a minimum, control of the heating equipment using interior temperature sensors.

**CITY BUILDING.** A covered building that is owned by the city and for which the city regularly pays all or part of the annual energy bills.

**Exception:** The term "city building" shall not include:

1. Any building that participates in the tenant interim lease apartment purchase program.
2. Any building that participates in a program administered by the department of housing preservation and development.
3. Any building managed by the New York city health and hospitals corporation.
4. Any senior college in the City University of New York system.

5. Any cultural institution that is in the Cultural Institutions Group as determined by the department of cultural affairs.

**COVERED BUILDING.** As it appears in the records of the department of finance: (i) a building that exceeds 50,000 gross square feet (4645 m<sup>2</sup>), (ii) two or more buildings on the same tax lot that together exceed 100,000 gross square feet (9290 m<sup>2</sup>), or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet (9290 m<sup>2</sup>).

**Exception:** The term "covered building" shall not include real property classified as class one pursuant to subdivision one of section eighteen hundred two of the real property tax law of the state of New York.

**CURRENT FACILITY REQUIREMENTS.** The owner's current operational needs and requirements for a building, including temperature and humidity set points, operating hours, filtration, and any integrated requirements such as controls, warranty review, and service contract review.

**ENERGY AUDIT OR AUDIT.** A systematic process of identifying and developing modifications and improvements of the base building systems, including but not limited to alterations of such systems and the installation of new equipment, insulation or other generally recognized energy efficiency technologies to optimize energy performance of the building and achieve energy savings, provided that such process shall not be less stringent than the Level II Energy Survey and Engineering Analysis of the 2004 edition of Procedures for Commercial Building Energy Audits published by the American Society of Heating, Refrigerating and Air-conditioning Engineers Inc. (ASHRAE).

**ENERGY AUDITOR.** An approved agency authorized by the department to perform energy audits and to certify audit reports required by this article. Until such time as there is a national standard establishing qualifications for persons performing energy audits and such standard has been adopted by the department, an energy auditor shall be a registered design professional with such other certification or qualification as the department deems to be appropriate. After the establishment of such a national standard, the department may adopt the qualifications of the national standard with such modifications as the department deems to be appropriate.

**ENERGY MANAGEMENT SYSTEM.** A system incorporating interior temperature sensors and a central processing unit and controls, which are used to monitor and control gas, steam and oil usage, as is applicable, based on the need for heating.

**ENERGY EFFICIENCY REPORT.** The report required to be filed pursuant to section 28-308.4.

**FINANCIAL HARDSHIP (OF A BUILDING).** A building shall be considered to be subject to financial hardship if the building:

1. Had arrears of property taxes or water or wastewater charges that resulted in the property's inclusion, within two years prior to the due date of an energy efficiency report, on the department of finance's annual New York city tax lien sale list;
2. Is exempt from real property taxes pursuant to sections 420-a, 420-b, 446 or 462 of the real property tax law and applicable local law and the owner had negative revenue less expenses during the two tax years prior to the due date of an energy efficiency report as certified to the department by a certified public accountant;
3. Had outstanding balances under the department of housing preservation and development's emergency repair program that resulted in the property's inclusion, within two years prior to the due date of an energy efficiency report, on the department of finance's annual New York city tax lien sale list; or
4. Has an active or effective commitment letter from a governmental agency that provides for the financing of the rehabilitation, within a period of 5 years or less, of such building by such government agency for the purposes of affordable housing for low or moderate income families.

**OWNER.** The owner of record of a covered building, except that in the case of a net lease of an entire building for a term of 49 years or more, inclusive of renewal options, the term owner shall refer to the net lessee and in the case of a covered building held in cooperative or condominium form of ownership, the term owner shall refer to the board of managers in the case of a condominium and the board of directors in the case of a cooperative apartment corporation.

**RETRO-COMMISSIONING.** A systematic process for optimizing the energy efficiency of existing base building systems through the identification and correction of deficiencies in such systems, including but not limited to repairs of defects, cleaning, adjustments of valves, sensors, controls or programmed settings, and/or changes in operational practices.

**RETRO-COMMISSIONING AGENT.** An individual, who shall not be a certified refrigerating system operating engineer or a licensed high pressure boiler operating engineer on the staff of the building being retro-commissioned, authorized by the department to certify retro-commissioning reports required by this article. Until such time as there is a national standard establishing qualifications for persons who perform retro-commissioning and such standard has been adopted by the department, a retro-commissioning agent shall be a registered design professional, a certified refrigerating system operating engineer, or a licensed high

pressure boiler operating engineer, with such other qualification or certification as determined by the department. After the establishment of such a national standard, the department may adopt the qualifications of the national standard with such modifications as the department deems to be appropriate.

**SIMPLE BUILDING.** A covered building with neither a central chilled water system nor a central cooling system that covers more than 10 percent of the building's gross area.

**SIMPLE PAYBACK.** The number of years for the projected annual energy savings to equal the amount invested in the energy conservation measure, as determined by dividing the investment by the annual energy savings.

**SPACE.** An area within a building enclosed by floor to ceiling walls, partitions, windows and doors.

**SYSTEM OR SUBSYSTEM.** Shall have the same definition as set forth in section two hundred two of the New York city energy conservation code.

**§28-308.2 Energy audits required.** The owner shall ensure that an energy audit is performed on the base building systems of a covered building prior to filing an energy efficiency report as required by this article. Except as otherwise provided in section 28-308.7, an energy audit shall be performed by or under the supervision of an energy auditor and shall be performed in accordance with rules promulgated by the department. The audit process shall cover the base building systems and shall identify at a minimum:

1. All reasonable measures, including capital improvements, that would, if implemented, reduce energy use and/or the cost of operating the building;
2. For each measure, the associated annual energy savings, the cost to implement, and the simple payback, calculated by a method determined by the department;
3. The building's benchmarking output consistent with the United States Environmental Protection Agency Portfolio Manager tool or as otherwise established by the department;
4. A break-down of energy usage by system and predicted energy savings by system after implementation of the proposed measures; and
5. A general assessment of how the major energy consuming equipment and systems used within tenant spaces impact the energy consumption of the base building systems based on a representative sample of spaces.

**Exceptions:**

1. No energy audit is required if the building complies with one of the following as certified by a registered design professional:
  - 1.1. The covered building has received an EPA Energy Star label for at least two of the three years preceding the filing of the building's energy efficiency report.
  - 1.2. There is no EPA Energy Star rating for the building type and a registered design professional submits documentation, as specified in the rules of the department, that the building's energy performance is 25 or more points better than the performance of an average building of its type over a two-year period within the three-year period prior to the filing of an energy efficiency report consistent with the methodology of the LEED 2009 rating system for Existing Buildings published by the United States Green Building Council or other rating system or methodology for existing buildings, as determined by the department.
  - 1.3. The covered building has received certification under the LEED 2009 rating system for Existing Buildings published by the United States Green Building Council or other rating system for existing buildings, as determined by the department, within four years prior to the filing of the building's energy efficiency report.
2. An energy audit shall not be required for the first energy efficiency report of a simple building that is in compliance with six out of seven of the following items as certified by a registered design professional:
  - 2.1. Individual heating controls. (i) Each dwelling unit in the building has one or more thermostatic controls controlling all the heating units within the dwelling unit and any heated space not within a dwelling unit has one or more thermostatic controls controlling all the heating units within the space, or (ii) the building has a central heating system controlled by an energy management system or a building management system that incorporates temperature sensors located in at least 10 percent of the dwelling units and 10 percent of the heated spaces, except that the total number of sensors required within the building shall not be less than 10 nor more than 30.

- 2.2. Common area and exterior lighting. Common area (lighting outside of tenant spaces) and exterior lighting, at a minimum, are in compliance with the provisions of the New York city energy conservation code as in effect for new systems installed on or after July 1, 2010.
- 2.3. Low flow faucets and shower heads. All faucets and showerheads within the building, at a minimum, meet the standards of Table 604.4 of the New York city plumbing code as in effect for new systems installed on or after July 1, 2010.
- 2.4. Pipe insulation. All exposed pipes that are used to convey heat or hot water are insulated, at a minimum, in accordance with the standards of the New York city energy conservation code as in effect for new systems installed on or after July 1, 2010.
- 2.5. Domestic hot water. All domestic hot water tanks that do not have built-in insulation are insulated with a minimum insulation value of R-8.
- 2.6. Washing machines. All common area clothes washing machines are front loading.
- 2.7. Cool roof. The roof complies with section 1504.8 of the New York city building code as in effect for new buildings constructed on or after July 1, 2010.

**§28-308.2.1 Contents of audit report.** The energy auditor shall prepare and certify a report of the energy audit. Except as otherwise provided in section 28-308.7, the audit report shall include such information relating to the audit as shall be specified in the rules of the department, including but not limited to (i) the date that the audit was completed, and (ii) the information specified in section 28-308.2.

**§28-308.2.1.1 Compliance with landmarks laws.** The cost estimates for covered buildings that are regulated by any city, state or federal law regulating landmarks and historic buildings shall include all additional costs necessary for the proposed work to comply with such law.

**§28-308.2.2 Timing of energy audit.** Except as otherwise provided in section 28-308.7, the energy audit shall be completed no earlier than four years prior to the date on which a covered building's energy efficiency report is filed with the department pursuant to this article.

**§28-308.3 Retro-commissioning required.** The owner shall ensure that retro-commissioning is performed on the base building systems of a covered building prior to filing an energy efficiency report as required by this article. Except as otherwise provided in section 28-308.7, retro-commissioning shall be performed by or under the supervision of a retro-commissioning agent in accordance with rules promulgated by the department. Such rules, at a minimum, shall ensure that sufficient analysis, corrections and testing have been done so that the base building systems meet the following criteria demonstrating efficient operation:

1. Operating protocols, calibration, and sequencing:
  - 1.1. HVAC temperature and humidity set points and setbacks are appropriate and operating schedules reflect major space occupancy patterns and the current facility requirements.
  - 1.2. HVAC sensors are properly calibrated.
  - 1.3. HVAC controls are functioning and control sequences are appropriate for the current facility requirements.
  - 1.4. Loads are distributed equally across equipment when appropriate (i.e. fans, boilers, pumps, etc. that run in parallel).
  - 1.5. Ventilation rates are appropriate for the current facility requirements.
  - 1.6. System automatic reset functions are functioning appropriately, if applicable.
  - 1.7. Adjustments have been made to compensate for oversized or undersized equipment so that it is functioning as efficiently as possible.
  - 1.8. Simultaneous heating and cooling does not occur unless intended.
  - 1.9. HVAC system economizer controls are properly functioning, if applicable.
  - 1.10. The HVAC distribution systems, both air and water side, are balanced.

- 1.11. Light levels are appropriate to the task.
  - 1.12. Lighting sensors and controls are functioning properly according to occupancy, schedule, and/or available daylight, where applicable.
  - 1.13. Domestic hot water systems have been checked to ensure proper temperature settings.
  - 1.14. Water pumps are functioning as designed.
  - 1.15. System water leaks have been identified and repaired.
2. Cleaning and repair:
    - 2.1. HVAC equipment (vents, ducts, coils, valves, soot bin, etc.) is clean.
    - 2.2. Filters are clean and protocols are in place to replace, as appropriate.
    - 2.3. Light fixtures are clean.
    - 2.4. Motors, fans, and pumps, including components such as belts, pulleys, and bearings, are in good operating condition.
    - 2.5. Steam traps have been replaced as required to maintain efficient operation, if applicable.
    - 2.6. Manual overrides on existing equipment have been remediated.
    - 2.7. Boilers have been tuned for optimal efficiency, if applicable.
    - 2.8. Exposed hot and chilled water and steam pipes 3 inches (76mm) or greater in diameter with associated control valves are insulated in accordance with the standards of the New York city energy conservation code as in effect for new systems installed on or after July 1, 2010.
    - 2.9. In all easily accessible locations, sealants and weather stripping are installed where appropriate and are in good condition.
3. Training and documentation:
    - 3.1. Permits for all HVAC, electrical and plumbing equipment are in order.
    - 3.2. Critical operations and maintenance staff have received appropriate training, which may include labor/management training, on all major equipment and systems and general energy conservation techniques.
    - 3.3. Operational and maintenance record keeping procedures (log books, computer maintenance records, etc.) have been implemented.
    - 3.4. The following documentation is on site and accessible to the operators: the operations and maintenance manuals, if such manuals are still available from the manufacturer, the maintenance contracts, and the most recent retro-commissioning report.

**Exception:** No retro-commissioning is required if the covered building has received certification under the LEED 2009 rating system for Existing Buildings published by the United States Green Building Council or other rating system for existing buildings, as determined by the department, within two years prior to the filing of the building's energy efficiency report and earned the LEED point for Existing Building Commissioning investigation and analysis and the LEED point for Existing Building Commissioning implementation.

**§28-308.3.1 Contents of retro-commissioning report.** The retro-commissioning agent shall prepare and certify a retro-commissioning report. The retro-commissioning report shall include such information relating to the retro-commissioning as shall be set forth in the rules of the department including, at a minimum:

1. Project and team information:
  - 1.1. Building address.
  - 1.2. Experience and certification of person performing retro-commissioning and any staff involved in the project.

- 1.3. Name, affiliation, and contact information for persons performing retro-commissioning and members of the retro-commissioning team, owner of building, and facility manager of building.
2. Building information:
  - 2.1. List of all HVAC, domestic hot water, electrical equipment, lighting, and conveyance equipment types in the base building systems.
  - 2.2. Benchmarking output.
3. Testing protocol:
  - 3.1. List of all equipment types tested.
  - 3.2. For each equipment type tested, a list of the sample rates (percent of each type of equipment tested), the testing methodology, including any diagnostic equipment used, and the test results.
  - 3.3. List of integrated system testing performed.
4. Master list of findings, including for each, the name of the retro-commissioning measure and its assigned number, a brief description of the measure, recommended corrections, the benefits attained, estimated annual savings (energy and cost), the estimated implementation cost, and the simple payback.
5. Deficiencies corrected:
  - 5.1. List of repairs completed during investigation.
  - 5.2. List of deficiencies corrected, including, for each deficiency, the date corrected, by whom the correction was made, the actual cost, and projected savings.

**§28-308.3.2 Timing of retro-commissioning.** Except as otherwise provided in section 28-308.7, the retro-commissioning shall be completed no earlier than four years prior to the date on which a covered building's energy efficiency report is filed with the department pursuant to this article.

**§28-308.3.3 Documentation of retro-commissioning.** A copy of the latest up-to-date equipment manuals and the most recent retro-commissioning report shall be maintained at every covered building and shall be made available upon request for inspection by the department.

**§28-308.4 Energy efficiency report required.** Except as otherwise provided in section 28-308.7, the owner of a covered building shall file an energy efficiency report for such building between January first and December thirty-first of the calendar year in which such report is due pursuant to this section and between January first and December thirty-first of every tenth calendar year thereafter.

**Exceptions:**

1. An owner may apply for an extension of time to file an energy efficiency report if despite such owner's good faith efforts, to be documented in such application, the owner is unable to complete the required energy audit and retro-commissioning prior to the scheduled due date for such report. The commissioner may grant no more than two such extensions of no more than one year each. Extensions granted pursuant to this provision shall not extend the scheduled due dates for subsequent energy efficiency reports.
2. An owner may receive annual extensions of time to file an energy efficiency report based on financial hardship of the building.

**§28-308.4.1 Due dates.** The first energy efficiency reports for covered buildings in existence on the effective date of this article and for new buildings shall be due, beginning with calendar year 2013, in the calendar year with a final digit that is the same as the last digit of the building's tax block number, as illustrated in the following chart:

Last digit of tax block number	0	1	2	3	4	5	6	7	8	9
Year first EER is due	2020	2021	2022	2013	2014	2015	2016	2017	2018	2019

Owners of covered buildings (i) that are less than 10 years old at the commencement of their first assigned calendar year or (ii) that have undergone substantial rehabilitation, as certified by a registered design professional, within the 10 year period prior to any calendar year in which an energy efficiency report is due, such that at the commencement of such calendar year all of the base building systems of such building are in compliance with the New York city energy conservation code as in effect for new buildings constructed on and after July 1, 2010, or as in effect on the date of such substantial rehabilitation, whichever is later, may defer submitting an energy efficiency report for such building until the tenth calendar year after such assigned calendar year.

**Exception:** The first due dates for city buildings shall be in accordance with a staggered schedule, commencing with calendar year 2013 and ending with calendar year 2022 for buildings in existence on the effective date of this article, to be submitted by the department of citywide administrative services to the department on or prior to December 31, 2011. A city building constructed after the effective date of this article shall be added to such schedule within 10 years after the issuance of the first certificate of occupancy for such building. Copies of energy efficiency reports submitted to the department with respect to city buildings that are not submitted by the department of citywide administrative services shall also be submitted to the department of citywide administrative services.

**§28-308.4.2 Combined audit and retro-commissioning.** Nothing in this article shall prevent an owner from performing the audit and the retro-commissioning in a combined process, provided that all the requirements of sections 28-308.2 and 28-308.3 are met.

**§28-308.5 Content of energy efficiency report.** Except as otherwise provided in section 28-308.7, the energy efficiency report shall include, in a format prescribed by the department, (i) the energy audit report or documentation substantiating that an exception as set forth in section 28-308.2 applies to such building, and (ii) the retro-commissioning report or documentation substantiating that an exception as set forth in section 28-308.3 applies to such building.

**§28-308.6 Notification by the department of finance.** The department of finance shall notify the owner of the requirements of this article three years prior to the calendar year in which the covered building's energy efficiency report is due and in the calendar year prior to the calendar year in which such report is due.

**§28-308.7 Early compliance.** Notwithstanding any other provision of this article, an owner may submit an energy efficiency report, including both an energy audit report pursuant to section 28-308.7.1 and a retro-commissioning report pursuant to section 28-308.7.2, in the calendar year commencing January 1, 2013 and ending December 31, 2013 in order to achieve early compliance with this section. An energy efficiency report submitted for early compliance shall be deemed to satisfy the first required energy efficiency report for the building as assigned pursuant to section 28-308.4.1. The next required energy efficiency report for such building shall be due in the tenth calendar year after the first assigned due date for such report.

**§28-308.7.1 Early compliance energy audit report.** An energy audit report for a covered building shall be acceptable for early compliance if it is completed after January 1, 2006 and it includes:

1. The address of the building, completion date of the audit, signature and credentials of the person performing or supervising the performance of the audit and of the audit team; and
2. The information required in items 1 through 5 of section 28-308.2.

**§28-308.7.1.1 Early compliance audit completed after January 1, 2006 and prior to the effective date of this article.** An early compliance audit completed after January 1, 2006 and prior to the effective date of this article shall have met the following additional criteria:

1. The audit shall have met the requirements of the Level II Energy Survey and Analysis of the 2004 edition of Procedures for Commercial Building Energy Audits published by ASHRAE; or
2. The audit shall have been performed under a New York Power Authority or New York State Energy Research and Development Authority (NYSERDA) contract or by a NYSERDA Flex Tech contractor; and
3. The audit report shall be submitted along with certification by a registered design professional that the audit satisfies the criteria of this section.
4. A partial audit completed after January 1, 2006 and prior to the effective date of this article shall qualify for early compliance only if the base building systems that were not subject to such audit are audited, after the effective date of this article, in the manner set forth in section 28-308.7.1.2.

**§28-308.7.1.2 Early compliance audit completed after the effective date of this article.** An early compliance audit completed after the effective date of this article shall meet the following additional criteria:

1. The audit shall be performed by or under the supervision of a registered design professional and shall meet the requirements of the Level II Energy Survey and Analysis of the 2004 edition of Procedures for Commercial Building Energy Audits published by ASHRAE;
2. The auditing team shall include an individual who is one of the following:
  - 2.1. A NYSERDA approved Flex Tech contractor;
  - 2.2. A Certified Energy Manager (CEM) or Certified Energy Auditor (CEA), certified by the Association of Energy Engineers (AEE);
  - 2.3. A High-Performance Building Design Professional (HPBD) certified by ASHRAE; or
  - 2.4. For audits of multifamily residential buildings only, a Multi-family Building Analyst (MFBA), certified by the Building Performance Institute (BPI), or have such other qualification or certification as determined by the department;
3. An individual with at least three years of professional experience performing energy audits on buildings larger than 50,000 gross square feet (4645 m<sup>2</sup>) shall be a member of the auditing team;
4. The building's operations and maintenance staff shall be consulted at the start of and during the audit process; and
5. The registered design professional performing or supervising the audit shall certify that the audit satisfies the criteria of this section.

**§28-308.7.2 Early compliance retro-commissioning.** A retro-commissioning shall be acceptable for early compliance if it is completed after the effective date of this article and meets the following criteria:

1. The retro-commissioning shall be performed under a NYSERDA contract for base building retro-commissioning or certified by an individual who is not on the staff of the building and is (i) a registered design professional, (ii) a certified refrigerating system operating engineer, or (iii) a licensed high pressure boiler operating engineer;
2. The retro-commissioning team shall include an individual who is a Certified Commissioning Professional (CCP) certified by the Building Commissioning Association (BCA), a Certified Building Commissioning Professional (CBCP) certified by the AEE, a Commissioning Process Management Professional (CPMP) certified by ASHRAE, or an Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin, or has such other certification as determined by the department;
3. The retro-commissioning team shall include an individual with at least one year of professional experience performing retro-commissioning on the mechanical systems of buildings larger than 50,000 gross square feet (4645 m<sup>2</sup>);
4. The building's operations and maintenance staff shall be consulted at the start of and during the retro-commissioning process; and
5. The retro-commissioning report shall contain a certification that sufficient analysis and testing has been done and corrections have been performed so that the base building systems meet the criteria of section 28-308.3 and shall include the information specified in section 28-308.3.1.
6. Nothing in this section shall be construed to determine which individuals may perform the work to correct deficiencies identified during the retro-commissioning process, except as otherwise provided by applicable law.

**§28-308.8 Optional compliance for energy efficiency reports due in the calendar year commencing January 1, 2013.** Notwithstanding any other provision of this article, audits and retro-commissioning for energy efficiency reports scheduled to be due in the calendar year commencing January 1, 2013 shall be performed, at the option of the owner, in accordance with the provisions for early compliance as set forth in section 28-308.7 or in accordance with procedures set forth in the rules of the department, if such procedures are promulgated within one year prior to the due date of such report. If such procedures are not promulgated within one year prior to the due date of such report, audit and retro-commissioning for energy efficiency reports due in the calendar year commencing January 1, 2013 shall comply with the audit and retro-commissioning procedures for early compliance.

**§28-308.9 Rules.** The department shall promulgate such rules as are necessary to carry out the provisions of this article in a timely manner, which may include separate fees for filing and review of applications and reports filed pursuant to this article.

**ARTICLE 309**  
**BENCHMARKING ENERGY AND WATER USE**

**§28-309.1 General.** The energy and water use of city buildings and covered buildings shall be benchmarked in accordance with this article.

**\*§28-309.2 Definitions.** As used in this article, the following terms shall have the following meanings:

**BENCHMARK.** To input and submit to the benchmarking tool the total use of energy and water for a building for the previous calendar year and other descriptive information for such building as required by the benchmarking tool.

**BENCHMARKING TOOL.** The internet-based database system developed by the United States environmental protection agency, and any complementary interface designated by the office of long-term planning and sustainability, to track and assess the energy and water use of certain buildings relative to similar buildings.

**CITY BUILDING.** A building that is more than 10,000 gross square feet (929 m<sup>2</sup>), as it appears in the records of the department of finance, that is owned by the city or for which the city regularly pays all of the annual energy bills, provided that two or more buildings on the same tax lot shall be deemed to be one building.

**Exception:** The term "city building" shall not include:

1. Any building owned by the city that participates in the tenant interim lease apartment purchase program; or
2. Any building owned by the city that (i) is 25,000 gross square feet (4645 m<sup>2</sup>) or less, as it appears in the records of the department of finance, and (ii) participates in a program administered by the department of housing preservation and development.

**COVERED BUILDING.** As it appears in the records of the department of finance: (i) a building that exceeds 25,000 gross square feet (4645 m<sup>2</sup>), (ii) two or more buildings on the same tax lot that together exceed 100,000 gross square feet (9290 m<sup>2</sup>), or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet (9290 m<sup>2</sup>), or (iv) a city building.

**Exceptions:** The term "covered building" shall not include:

1. Any building owned by the city that participates in the tenant interim lease apartment purchase program.
2. Real property classified as class one pursuant to subdivision one of section one thousand eight hundred two of the real property tax law.
3. Real property, not more than three stories, consisting of a series of attached, detached or semi-detached dwellings, for which ownership and the responsibility for maintenance of the HVAC systems and hot water heating systems is held by each individual dwelling unit owner, and with no HVAC system or hot water heating system in the series serving more than two dwelling units, as certified by a registered design professional to the department.

**DATA CENTER.** A room or rooms used primarily to house high density computing equipment, such as server racks, used for data storage and processing.

**DWELLING UNIT.** A single unit consisting of one or more habitable rooms, occupied or arranged to be occupied as a unit separate from all other units within a building, and used primarily for residential purposes and not primarily for professional or commercial purposes.

**ENERGY.** Electricity, natural gas, fuel oil and steam.

**OWNER.** The owner of record, provided that "owner" shall be deemed to include: (i) the net lessee in the case of a building subject to a net lease with a term of at least forty-nine years, inclusive of all renewal options, (ii) the board of managers in the case of a condominium, and (iii) the board of directors in the case of a cooperative apartment corporation.

**TENANT.** Any tenant, tenant-stockholder of a cooperative apartment corporation, condominium unit owner or other occupant.

*\*Section 28-309.2 was amended by: [Local Law 133 of 2016](#). This law has an effective date of October 31, 2016.*

**§28-309.3 Benchmarking required for city buildings.** No later than May 1, 2010, and no later than every May first thereafter, any city building shall be benchmarked by the agency or entity primarily responsible for the management of such building, in coordination with the department of citywide administrative services with respect to energy use, and with the New York city

department of environmental protection with respect to water use. Benchmarking of water use shall not be required unless the building was equipped with automatic meter reading equipment by the New York city department of environmental protection for the entirety of the previous calendar year. The city shall maintain such documents as the department determines are necessary for the purpose of carrying out the provisions of this article.

**\*§28-309.4 Benchmarking required for covered buildings other than city buildings.** The owner of a covered building, other than a city building, shall annually benchmark such covered building no later than May 1, 2011, and no later than every May 1 thereafter. Benchmarking of water use shall not be required unless the building was equipped with automatic meter reading equipment by the New York city department of environmental protection for the entirety of the previous calendar year. The owner or the owner's representative performing the benchmarking shall consult with the operating staff of the building, as appropriate. Information submitted to the benchmarking tool must be accurate and complete.

**Exception:** The first mandatory benchmarking for a covered building, other than a city building, that (i) does not exceed 50,000 gross square feet (4645 m<sup>2</sup>), (ii) is not one of two or more buildings on the same tax lot that together exceed 100,000 gross square feet (9290 m<sup>2</sup>) and (iii) is not one of two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet (9290 m<sup>2</sup>), shall be completed on or before May 1 of the first year that commences after the department determines and sets forth in a rule that the utility company providing energy to such buildings will, upon request of an owner, directly upload information necessary to benchmark such building.

*\*Section 28-309.4 was amended by: [Local Law 133 of 2016](#). This law has an effective date of October 31, 2016.*

**\*§28-309.4.1 Obligation to report energy use for all utility accounts and addresses connected to the building.** The owner shall submit information to the benchmarking tool for all utility accounts and addresses connected to the building, including those for separately metered tenant spaces. The owner shall obtain information for separately metered tenant spaces from the utility. If the utility does not have a program to provide such information, the owner shall make reasonable efforts to obtain such information from the tenant. Tenants shall have the obligation to provide such information.

*\*Section 28-309.4.1 was amended by: [Local Law 133 of 2016](#). Sections 28-309.4.1.1 through 28-309.4.1.4 were repealed by: [Local Law 133 of 2016](#). This law has an effective date of October 31, 2016.*

**\*§28-309.4.2 Preservation of documents, inspection, and audit.** An owner of a covered building shall maintain such records as the department determines are necessary for carrying out the purposes of this article, including but not limited to energy and water bills and reports or forms received from utilities and tenants. Where energy use within separately metered tenant spaces is omitted, records shall be maintained documenting the owner's efforts to obtain such information. All records shall be preserved for a period of three years, provided that the commissioner may consent to their destruction within that period or may require that such records be preserved longer than such period. At the request of the department, such records shall be made available for inspection and audit by the department at the place of business of the owner or at the offices of the department during normal business hours.

*\*Section 28-309.4.2 was amended by: [Local Law 133 of 2016](#). This law has an effective date of October 31, 2016.*

**\*§28-309.4.3 Violations.** It shall be unlawful for the owner of a covered building to fail to benchmark pursuant to section 28-309.4. The commissioner shall classify such violation as a lesser violation. If, upon audit of a benchmarking report, the department finds that information submitted to the benchmarking tool was substantially inaccurate or incomplete, the department may reject the purported benchmarking and the owner shall be liable for a violation of section 28-309.4 as if no benchmarking had been performed.

**Exception:** Notwithstanding section 28-204.2, no civil penalty shall be imposed on the owner of a covered building for a violation of this section for such covered building if:

1. Such covered building (i) does not exceed 50,000 gross square feet (4645 m<sup>2</sup>), (ii) is not two or more buildings on the same tax lot that together exceeds 100,000 gross square feet (9290 m<sup>2</sup>), (iii) is not two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet (9290 m<sup>2</sup>), and (iv) is not a city building;
2. Such owner requested, from the department or another agency designated pursuant to section 28-309.11, benchmarking assistance in connection with such building, and such request was made at least 60 days before the due date of the benchmarking report for which such violation was issued; and
3. Such owner corrects such violation within 60 days after the date of the notice of such violation.

*\*Section 28-309.4.3 was amended by: [Local Law 133 of 2016](#). This law has an effective date of October 31, 2016.*

**§28-309.5 Direct upload.** Information shall be directly uploaded to the benchmarking tool in accordance with the following:

**\*§28-309.5.1 Direct upload by a utility company or other source.** The office of long-term planning and sustainability shall encourage and facilitate any utility company or any other source authorized by the office of long-term planning and sustainability to upload directly to the benchmarking tool as soon as practicable, information necessary to benchmark a building.

*\*Section 28-309.5.1 was amended by: [Local Law 133 of 2016](#). This law has an effective date of October 31, 2016.*

**§28-309.5.2 Direct upload by the New York city department of environmental protection.** The New York city department of environmental protection shall upload directly to the benchmarking tool information on water use at all buildings that were equipped with automatic meter reading equipment by the New York city department of environmental protection for the entirety of the previous calendar year and that are subject to the benchmarking requirements of this article.

**§28-309.6 Suspension.** The director of the office of long-term planning and sustainability may suspend all or part of the requirement to benchmark pursuant to this article upon a written finding that a technological deficiency in the benchmarking tool precludes compliance with this article. The director of the office of long-term planning and sustainability may lift all or part of any such suspension upon a written finding that such deficiency has been corrected. The office of long-term planning and sustainability shall notify the speaker of the city council, the department, the department of citywide administrative services, the New York city department of environmental protection and the department of finance promptly upon issuing a suspension or lifting a suspension pursuant to this section.

**§28-309.7 Notification and transmission of information.** The department of finance shall:

1. Annually notify owners of covered buildings of their obligation to benchmark pursuant to section 28-309.4, provided that the failure of the department of finance to notify any such owner shall not affect the obligation of such owner to benchmark pursuant to such section.
2. Notify owners of covered buildings of any suspension or lifting of a suspension pursuant to section 28-309.6.
3. Make available to the department information regarding owners of covered buildings for which no benchmarking information was generated by the benchmarking tool.

**\*§28-309.8 Disclosure.** The department of finance shall make information generated by the benchmarking tool available to the public on the internet no later than September 1 of the year in which the covered buildings are benchmarked. Such information shall include, but need not be limited to: (i) the energy use intensity, (ii) the water use per gross square foot, (iii) where available, a rating or score that compares the energy and water use of the building to that of similar buildings, and (iv) a comparison of data across calendar years for any years such building was benchmarked. Information generated by the benchmarking tool for the 2009 calendar year for city buildings, for the 2010 calendar year for covered buildings, and for the 2011 calendar year for covered buildings whose primary use is residential, as determined by the department of finance, shall not be disclosed.

**Exception:** Ratings or scores generated by the benchmarking tool for a covered building that contains a data center, television studio, and/or trading floor that together exceed ten percent of the gross square footage of any such building shall not be disclosed until the office of long-term planning and sustainability determines that the benchmarking tool can make adequate adjustments for such facilities. When the office of long-term planning and sustainability determines that the benchmarking tool can make such adjustments, it shall report such determination to the mayor and the speaker of the city council. Until such determination is made, the office of long-term planning and sustainability shall report biennially to the mayor and the speaker of the city council that the benchmarking tool is unable to make such adjustments.

*\*Section 28-309.8 was amended by: [Local Law 133 of 2016](#). This law has an effective date of October 31, 2016.*

**\*§28-309.9 Report.** No later than December 31 of each year, the office of long-term planning and sustainability shall prepare, submit to the mayor and the speaker of the city council, and post on the internet a report reviewing and evaluating the administration and enforcement of this article and analyzing data obtained from the benchmarking tool. Such report shall contain information regarding: (i) the energy and water efficiency of buildings in the city, (ii) the accuracy of benchmarked data and whether there is a need to train and/or certify individuals who benchmark, (iii) compliance with the requirements of this article, (iv) any administrative and legislative recommendations for strengthening the administration and enforcement of this article, (v) the effectiveness of the benchmarking tool in accounting for New York city conditions, including, but not limited to, high density occupancies, use of steam, large building size, and specific high-energy uses such as data centers, television studios, and trading floors, and (vi) such other information and analyses as the office of long-term planning and sustainability deems appropriate.

*\*Section 28-309.9 was amended by: [Local Law 133 of 2016](#). This law has an effective date of October 31, 2016.*

**§28-309.10 Rules.** The department, the department of finance and the office of long-term planning and sustainability may promulgate such rules as deemed necessary to carry out the provisions of this article.

**\*§28-309.11 Benchmarking assistance.** The department or another agency designated by the mayor shall establish a system to receive and respond to requests from owners for assistance with respect to fulfilling the benchmarking requirements of this section. Such assistance may include, but need not be limited to, trainings, the provision of reference guides, and a publicized telephone number and email address to receive direct questions. The annual notice required by section 28-309.7 shall notify covered building owners that such assistance is available and shall describe how such assistance can be obtained.

*\*Section 28-309.11 was added by: [Local Law 133 of 2016](#). This law has an effective date of October 31, 2016.*

## **ARTICLE 310 REQUIRED UPGRADE OF LIGHTING SYSTEMS**

**§28-310.1 General.** Lighting systems in covered buildings shall be upgraded as provided for in this article.

**\*§28-310.2 Definitions.** As used in this article, the following terms shall have the following meanings:

**COVERED BUILDING.** As it appears in the records of the department of finance: (i) a building that exceeds 25,000 gross square feet (2323 m<sup>2</sup>), (ii) two or more buildings on the same tax lot that together exceed 100,000 gross square feet (9290 m<sup>2</sup>) or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet (9290 m<sup>2</sup>).

**Exceptions:** The term "covered building" shall not include:

1. Real property classified as class one pursuant to subdivision one of section eighteen hundred two of the real property tax law; or
2. Real property, not more than three stories, consisting of a series of attached, detached or semi-detached dwellings, for which ownership and the responsibility for maintenance of the HVAC systems and hot water heating systems is held by each individual dwelling unit owner, and with no HVAC system or hot water heating system in the series serving more than two dwelling units, as certified by a registered design professional to the department.

*\*Section 28-310.2 was amended by: [Local Law 134 of 2016](#). This law has an effective date of October 31, 2016.*

**\*§28-310.3 Upgrade of lighting systems of covered buildings required.** No later than January 1, 2025 the lighting systems of covered buildings shall be in compliance with the standards for new systems set forth in the New York city energy conservation code and/or applicable standards referenced in such energy code. The owner of a covered building shall ensure that the upgrade of the lighting system of the entire covered building is completed on or prior to such date and shall file a report with the department, in accordance with the rules of the department, prepared by a registered design professional or a licensed master or special electrician certifying that such upgrade has been completed and that the work is in compliance with the technical standards of the New York city electrical code. The department may impose a fee for filing and review of such reports.

**Exceptions:**

1. An element of a lighting system that is in compliance with the standards of the New York city energy conservation code and/or applicable standards referenced in such code as in effect for new systems installed on or after July 1, 2010.
2. Lighting power densities in any space bounded by permanent floor-to-ceiling partitions and/or closable doors that are in compliance with the standards of the New York city energy conservation code and/or applicable standards referenced in such code as in effect for new systems installed on or after July 1, 2010.
2. The lighting system within dwelling units classified in occupancy group R-2 or R-3.
3. The lighting system within a space classified in occupancy group A-3 that is within a house of worship.

*\*Section 28-310.3 was amended by: [Local Law 134 of 2016](#). This law has an effective date of October 31, 2016. The mis-numbering will be corrected in future legislation.*

## **ARTICLE 311 INSTALLATION OF ELECTRICAL SUB-METERS IN TENANT SPACES**

**§28-311.1 General.** Sub-meters shall be installed in covered buildings as provided in this article.

**\*§28-311.2 Definitions.** As used in this article, the following terms shall have the following meanings:

**COVERED BUILDING.** As it appears in the records of the department of finance: (i) a building that exceeds 25,000 gross square feet (2323 m<sup>2</sup>), (ii) two or more buildings on the same tax lot that together exceed 100,000 gross square feet (9290 m<sup>2</sup>), or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet (9290 m<sup>2</sup>).

**Exceptions:** The term "covered building" shall not include:

1. Real property classified as class one pursuant to subdivision one of section eighteen hundred two of the real property tax law; or
2. Real property, not more than three stories, consisting of a series of attached, detached or semi-detached dwellings, for which ownership and the responsibility for maintenance of the HVAC systems and hot water heating systems is held by each individual dwelling unit owner, and with no HVAC system or hot water heating system in the series serving more than two dwelling units, as certified by a registered design professional to the department.

**COVERED TENANT SPACE.** (i) A tenant space larger than 5,000 gross square feet (465 m<sup>2</sup>) on one or more floors of a covered building let or sublet to the same person, or (ii) a floor, of a covered building, larger than 5,000 gross square feet (465 m<sup>2</sup>) consisting of tenant spaces let or sublet to two or more different persons.

**Exception:** The term "covered tenant space" shall not include dwelling units classified in occupancy group R-2 or R-3.

**METER.** A device installed by an electrical utility company or corporation that measures the flow of electricity supplied to a building or to a defined space within a building and used by the utility to bill consumers for electrical service.

**SUB-METER.** A device meeting the standards of the department or, where applicable, the public service commission, installed within a building's electrical distribution system that measures the flow of electricity within a defined space within the building and that may, but need not, be used for apportioning the cost of electricity among the building's tenants or subtenants.

**TENANT SPACE.** Space within a covered building that is let or sublet to another person by the owner or a lessee of such space.

*\*Section 28-311.2 was amended by: [Local Law 132 of 2016](#). This law has an effective date of October 31, 2016.*

**\*§28-311.3 Sub-meters required for covered tenant spaces.** On and after January 1, 2025, the electrical consumption of each covered tenant space shall be measured by one or more sub-meters. Sub-meters shall be installed in existing covered tenant spaces by the owner or the lessor of such space on or before January 1, 2025 and thereafter as new covered tenant spaces are created within the building. If the covered tenant space is a floor with multiple tenancies, each tenancy that is 5,000 gross square feet (465 m<sup>2</sup>) or less shall (i) have a separate sub-meter, (ii) share a sub-meter with other tenant spaces on the floor, or (iii) share a sub-meter covering the entire floor.

**Exception:** Covered tenant space for which the electrical consumption within such space is measured by a meter dedicated exclusively to that space.

*\*Section 28-311.3 was amended by: [Local Law 132 of 2016](#). This law has an effective date of October 31, 2016.*

**§28-311.4 Monthly statements.** Each tenant or subtenant within a covered tenant space that has a sub-meter or sub-meters to measure electrical consumption shall be provided with a monthly statement showing the amount of electricity measured by the sub-meter for such tenant or subtenant during the month, and any amount charged to the tenant or subtenant for electricity. If the covered tenant space is a floor with multiple tenancies and the tenant's sub-meter covers other tenant spaces, the statement for such tenant shall show the electrical consumption for the area covered by the sub-meter and the percentage of that area that is leased by the tenant.

**\*§28-311.5 Reports.** The owner of each covered building shall file a report in accordance with the rules of the department prepared by a registered design professional or a licensed master or special electrician certifying that sub-meters have been installed in all covered tenant spaces in such building as required by this article or that covered tenant spaces are subject to the exception set forth in section 28-311.3. The department may impose a fee for filing and processing such reports.

*\*Section 28-311.5 was amended by: [Local Law 132 of 2016](#). This law has an effective date of October 31, 2016.*

## ARTICLE 312 CARBON MONOXIDE AND SMOKE ALARMS

**§28-312.1 General.** Required carbon monoxide and smoke alarms shall comply with the provisions of this article.

**§28-312.2 Periodic replacement of carbon monoxide alarms.** Carbon monoxide alarms required pursuant to section 908.7 of the New York city building code or sections 27-981.1, 27-981.2 and 27-981.3 of the 1968 building code shall be replaced when the time elapsed since the installation of such alarm exceeds the manufacturer's suggested useful life of the alarm.

**Exception:** A carbon monoxide alarm installed prior to the effective date of this article shall be replaced when the time elapsed since the installation of such alarm exceeds the manufacturer's suggested useful life of the alarm or within 6 months after the effective date of this article, whichever is later.

**§28-312.3 Audible notification of expiration of useful life of carbon monoxide alarms.** All carbon monoxide alarms installed after the effective date of this article shall comply with UL 2034 and be of a type that emits an audible notification at the expiration of the useful life of such alarm.

**28-312.4 Periodic replacement of smoke alarms.** Smoke alarms required pursuant to section 907.2 of the New York City building code or sections 27-978, 27-979, 27-980 and 27-981 of the 1968 building code shall be replaced when the time elapsed since the installation of such alarm exceeds the manufacturer's suggested useful life of the alarm.

**Exception:** A smoke alarm installed prior to the effective date of this section and whose end of useful life is not known shall be replaced with an alarm that complies with section 28-312.5 within 7 years after the effective date of this section.

**28-312.5 Audible notification of expiration of useful life of smoke alarms.** All smoke alarms installed after the effective date of this section shall comply with UL 217, shall employ a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years, and shall be of the type that emits an audible notification at the expiration of the useful life of the alarm.

### **ARTICLE 313 ACCESSIBILITY**

**§28-313.1 Retroactive requirement for directional signage at building entrances.** The provisions of section 1110.2 of the New York city building code requiring directional signage to be posted at inaccessible building entrances indicating the route to the nearest accessible entrance shall apply retroactively to all buildings that have such accessible entrances. Buildings in existence on the effective date of this section shall post such directional signage on or before August 1, 2013. Such directional signage shall be maintained in good condition.

**Exception:** Directional signage posted at building entrances in compliance with the americans with disabilities act of 1990 shall be deemed to be in compliance with section 1110.2 of the New York city building code.

**§28-313.2 Retroactive requirement for accessible building entrances.** The provisions of item 5 of section 1110.1 of the New York city building code requiring signage to be posted at accessible entrances where an inaccessible building entrance exists shall apply retroactively to all buildings that have such accessible entrances. Buildings in existence on the effective date of this section shall post such signage on or before August 1, 2013. Such signage shall be maintained in good condition.

**Exception:** Accessible entrance signs that are posted at building entrances in compliance with the americans with disabilities act of 1990 shall be deemed to be in compliance with section 1110.1 of the New York city building code subject to the inclusion on or adjacent to such signage of a contact telephone number or instructions to gain access if an otherwise accessible building entrance is subject to locking.

### **ARTICLE 314 PERIODIC WASTEWATER RECYCLING SYSTEM INSPECTION AND TESTING**

**§28-314.1 General.** Wastewater recycling systems installed in accordance with section C102 of appendix C of the New York city plumbing code shall be periodically inspected and tested in accordance with this article. This article shall not apply to rainwater recycling systems installed in accordance with section C103 of appendix C of the New York city plumbing code.

**§28-314.2 Frequency of inspection and testing.** The owner shall test and inspect wastewater recycling systems on a monthly basis. The commissioner may require additional testing and inspections of wastewater recycling systems as necessary to protect public safety.

**§28-314.3 Inspection and testing process.** Wastewater recycling systems shall be inspected and tested in accordance with sections 28-314.3.1 through 28-314.3.6.

**§28-314.3.1 Inspection and testing entities.** Required tests performed on behalf of the owner shall be performed by an approved agency with qualifications as set forth in department rules.

**§28-314.3.2 Scope.** At each test and inspection, in addition to the requirements prescribed by this article, all wastewater treatment equipment provided for operation of wastewater recycling systems shall be inspected to determine that they are in safe operating condition and parts have not worn to such an extent as to affect the safe and reliable operation of the installation. At each test and inspection, treated effluent from the wastewater recycling system shall be sampled and tested, the results of which shall comply with section C102.1 of the New York city plumbing code.

**§28-314.3.3 Notation of inspection or test.** After each test and inspection, the inspector shall affix the inspection date and his or her signature over a stamp identifying his or her approved agency and his or her approval number on the inspection certificate issued by the department.

**§28-314.3.4 Inspection and test reports submission.** Inspection and test reports shall be submitted on forms in such manner as required by the commissioner. Each inspection and test report shall include a listing of all violations for each device inspected and tested associated with the wastewater recycling system. A copy of the report, signed by the inspector performing the inspection and tests shall be delivered to the owner within 30 days of the site visit. All reports shall be kept on file by the approved agency and the owner for a period of at least 6 years.

**§28-314.3.5 Reporting an unsafe or hazardous condition.** The operation of the system shall immediately cease if any test sample does not meet the minimum water quality standards of Table C102.1 of the New York city plumbing code. The wastewater recycling system shall be placed into start-up mode and testing shall commence for at least five consecutive days demonstrating full compliance. If further inspection and testing reveals that the wastewater recycling system test samples do not meet the minimum water quality standards in table C102.1 of the New York City plumbing code, the system shall be taken out of service immediately by the agency performing the inspection. The building owner shall be notified immediately by the agency performing the inspection. The department shall be notified by the agency that the system has been taken out of service within 24 hours by telephone, electronically, in writing or as otherwise directed by the commissioner.

**§28-314.3.6 Repair.** All defects and violations identified during the inspection and testing process shall be corrected immediately prior to continuing the operation of the wastewater recycling system.

#### **ARTICLE 315 RETROACTIVE REQUIREMENTS**

**§28-315.1 General.** Buildings must be in compliance with the retroactive requirements of the provisions of this code. Such requirements are listed in this article along with the dates by which compliance must be achieved. The retroactive requirements of the 1968 building code continue in effect under this code in accordance with section 28-102.4.1 of this code. The dates for compliance with the retroactive requirements of the 1968 building code are as set forth in the applicable provisions of such 1968 building code. Failure to comply with a retroactive requirement of this code or of the 1968 building code by the date specified for such compliance is a violation of this code.

**§28-315.2 Fire protection systems.** The work specified in this section to enhance the fire protection systems of buildings shall be completed by the dates specified herein.

**§28-315.2.1 Painting of certain exposed portions of sprinkler systems.** The painting of exposed risers, cross connections and handles of valves of sprinkler systems in accordance with the retroactive requirements of section 903.6.3 of the New York city building code shall be completed by June 2, 2010 and certification of such painting shall be maintained in accordance with section 903.6.5 of such code.

**§28-315.2.2 Painting of certain exposed portions of standpipe systems.** The painting of exposed portions of standpipe systems and handles of valves serving such systems in accordance with the retroactive requirements of section 905.11.3 of the New York city building code shall be completed by June 2, 2010 and certification of such painting shall be maintained in accordance with section 905.11.6 of such code.

**\*§28-315.2.3 Animal service facilities.** By December 31, 2016, animal service facilities shall comply with the retroactive requirements of section 903.2.2.2 of the New York city Building Code and owners of such facilities shall file with the department a report certifying either that sprinklers have been installed or that the facility is in compliance with one of the exceptions set forth in such section.

*\*Section 28-315.2.3 was added by: [Local Law 78 of 2015](#). This law has an effective date of December 31, 2015.*

**§28-315.3 Sustainability.** The work specified in this section to enhance the sustainability of buildings must be completed by the dates specified herein.

**\*§28-315.3.1 Lighting systems.** By January 1, 2025, the lighting systems of certain buildings shall be in compliance with article 310 of this chapter and the owners of such buildings shall file a report in accordance with the rules of the department, prepared by a registered design professional or a licensed master or special electrician, certifying compliance with such section and compliance with the technical standards of the New York city electrical code. The department may impose a fee for filing and reviewing such reports.

*\*Section 28-315.3.1 was amended by: [Local Law 134 of 2016](#). This law has an effective date of October 31, 2016.*

**\*§28-315.3.2 Electrical sub-meters.** By January 1, 2025, the installation of electrical sub-meters in tenant spaces in certain buildings in accordance with article 311 of this chapter shall be completed and the owners of such buildings shall file a report in accordance with the rules of the department, prepared by a registered design professional or a licensed master or special electrician, certifying compliance with such section. The Department may impose a fee for filing and reviewing such reports.

*\*Section 28-315.3.2 was amended by: [Local Law 132 of 2016](#). This law has an effective date of October 31, 2016. Local Law 132 of 2016 incorrectly amended Section 28-315.3.1; this unintended error will be corrected in future legislation.*

**§28-315.4 Elevator safety.** The work specified in this section to improve the safety of existing elevators shall be completed by the dates specified herein.

**§28-315.4.1 Compliance with ASME A17.3 of 2002.** Existing elevators and escalators shall, at a minimum, comply with ASME A17.3 of 2002, as modified by chapter K3 of appendix K of the New York city building code. All work to achieve compliance with such requirements shall be completed by December 14, 2009.

**Exceptions:**

1. **Spaces below hoistways.** Spaces below hoistways shall be protected in accordance with section 2.5 of chapter K3 of such appendix by December 14, 2010.
2. **Car doors and gates.** Car doors and gates shall be in compliance with section 3.4.2 of chapter K3 of such appendix by December 14, 2012.
3. **Car illumination.** Car illumination shall be in compliance with section 3.4.5 of chapter K3 of such appendix by December 14, 2010.
4. **Traction elevators.** Traction elevators with single plunger brakes shall be in compliance with section 3.8.4.1 of chapter K3 of such appendix by January 1, 2027.
5. **Electrical protective devices.** Electrical protective devices shall be in compliance with section 3.10.4 of chapter K3 of such appendix by December 14, 2010.
6. **Automatic passenger and freight elevators.** Automatic passenger and freight elevators shall be in compliance with section 3.10.12 of chapter K3 of such appendix by January 1, 2020.
7. **Hydraulic elevators.** Hydraulic elevators shall be in compliance with section 4.3.3 of chapter K3 of such appendix by December 14, 2014.
8. **Escalator skirt obstruction devices.** Escalator skirt obstruction devices shall be in compliance with Section 5.3.7 of Chapter K3 of such appendix by January 1, 2014.

**§28-315.5 Fuel gas systems.** The work specified in this section to enhance the safety of fuel gas systems shall be completed by the dates specified herein.

**§28-315.5.1 Outside gas shut-off.** Existing gas services shall be provided with an outside emergency shutoff device acceptable to the commissioner and the fire commissioner in accordance with the retroactive requirements of item 1 of section E6 of appendix E of the New York city fuel gas code. Installation of such a device shall be completed no later than January 1, 2010.

**Exception:** For R-3 occupancies, the installation of such a device shall be completed no later than January 1, 2020.

**§28-315.6 Accessibility.** The work specified in this section to enhance the accessibility of buildings shall be completed by the dates specified herein.

**§28-315.6.1 Directional signage at inaccessible building entrances.** The posting of directional signage at inaccessible building entrances in accordance with the retroactive requirements of section 28-313.1 of this code shall be completed on or before August 1, 2013.

**§28-315.6.2 Signage at accessible building entrances.** The posting of signage at accessible building entrances in accordance with the retroactive requirements of section 28-313.2 of this code shall be completed on or before August 1, 2013.

**§28-315.7 Building security.** The work specified in this section to enhance building security shall be completed by the dates specified herein.

**§28-315.7.1 Security grilles on buildings in occupancy groups B or M.** Security grilles abutting sidewalks on buildings in occupancy groups B or M shall comply with the retroactive requirements of item 4 of section 1008.1.4.5 of the New York city

building code. On and after July 1, 2026, such grilles when closed shall permit visibility from the sidewalk of at least 70 percent of the area covered by such grille.

**§28-315.8 Resiliency.** The work specified in this section to enhance building resiliency shall be completed by the dates specified herein.

**§28-315.8.1 Emergency source of water for residential occupancies.** Within 8 years after the effective date of this section, existing buildings greater than five stories in occupancy groups I-1, R-1, R-2, and R-3 that supply potable water from the public water main to occupants with the assistance of pumps, other than pumps connected to an emergency or a standby power system that complies with the requirements of chapter 27 of the New York city building code, shall be equipped with additional fixtures capable of supplying potable water to occupants utilizing only the available pressure from the public water main in compliance with section 614 of the New York city plumbing code.

**§28-315.8.2 Connections for temporary external generators.** For the following buildings, the provision of connections for temporary external generators in accordance with the retroactive requirements of section G311.2 of appendix G of the New York city building code shall be completed by January 1, 2033, and a report detailing compliance with such requirements shall be filed with the department in accordance with section G311.2.2 by such date:

1. Buildings whose main use or dominant occupancy is group I-1 and that are located in an area of special flood hazard, as such term is defined in appendix G of the New York city building code;
2. Buildings whose main use or dominant occupancy is an adult home, enriched housing, community residence or intermediate care facility classified as occupancy group R pursuant to an exception to section 308.2.1 or 308.2.2 of the New York city building code and that are located in an area of special flood hazard, as such term is defined in appendix G of the New York city building code;
3. Buildings whose main use or dominant occupancy is group I-2 hospital and that are located in an area of special flood hazard or shaded X-Zone, as such terms are defined in appendix G of the New York city building code;
4. Buildings whose main use or dominant occupancy is group I-2 nursing home and that are located in an area of special flood hazard, as such term is defined in appendix G of the New York city building code; and
5. Buildings whose main use or dominant occupancy is group I-2, other than hospitals and nursing homes, and that are located in an area of special flood hazard, as such term is defined in appendix G of the New York city building code.

**§28-315.8.2.1 Modification to the area of special flood hazard or shaded X-Zone.** Where the area of special flood hazard or shaded X-Zone, as established in appendix G of the New York city building code, is modified on or after the effective date of this section, any building identified in section 28-315.8.2 and newly identified as being within such modified area of special flood hazard or shaded X-Zone shall, no later than 20 years following the adoption of such modification, comply with the retroactive requirements of section G311.2 of appendix G of the New York city building code. The owner of such building shall, no later than 20 years following the adoption of such modification, file with the department a report detailing compliance with such requirements in accordance with section G311.2.2.

**§28-315.8.3 Connections for temporary external boilers and chillers.** For buildings whose main use or dominant occupancy is group I-2 hospital and that are located in an area of special flood hazard or shaded X-Zone, as such terms are defined in appendix G of the New York city building code, the provision of connections for temporary external boilers and chillers in accordance with the retroactive requirements of section G311.3 of appendix G of the New York city building code shall be completed by January 1, 2033, and a report detailing compliance with such requirements shall be filed with the department in accordance with section G311.3.2 by such date.

**§28-315.8.3.1 Modification to the area of special flood hazard or shaded X-Zone.** Where the area of special flood hazard or shaded X-Zone, as established in appendix G of the New York city building code, is modified on or after the effective date of this section, any building whose main use or dominant occupancy is group I-2 hospital and that is newly identified as being within such modified area of special flood hazard or shaded X-Zone shall, no later than 20 years following the adoption of such modification, comply with the retroactive requirements of section G311.3 of appendix G of the New York city building code. The owner of such building shall, no later than 20 years following the adoption of such modification, file with the department a report detailing compliance with such requirements in accordance with section G311.3.2.

**\*§28-315.9 Single-occupant toilet rooms.** Notwithstanding any other provision of law or rule requiring separate facilities for each sex, on and after January 1, 2017, all single-occupant toilet rooms shall be made available for use by persons of any sex in accordance with section 403.2.1 of the New York city plumbing code. Nothing in this section shall be construed to require physical alteration of a single-occupant toilet room except for the posting and maintenance of appropriate signage in accordance with section 403.4 of the New York city plumbing code.

\*Section 28-315.9 was added by: [Local Law 79 of 2016](#). This law has an effective date of October 26, 2016.

## ARTICLE 316 INSULATION OF CONCEALED PIPES EXPOSED DURING ALTERATION OR REPAIR

**§28-316.1 Required insulation of certain concealed piping exposed during alteration or repair.** Where concealed existing piping is exposed in the course of the alteration or repair of a building, the owner of the building shall provide for the insulation of the exposed piping. The exposed piping shall be insulated to the extent required by the New York city energy conservation code for newly installed pipe of the same specifications and serving the same function as the exposed pipe. The entire exposed length of the piping shall be insulated as well as any further length of concealed pipe that can be directly accessed through openings made in the course of such alteration or repair.

### **Exceptions:**

1. Exposed pipe with one-inch (25-mm) thick continuous coverage of existing insulation in good condition.
2. Where the length of concealed pipe which may be directly accessed through openings made in the course of such alteration or repair is less than three feet (914 mm).
3. Where there is not sufficient space to insulate pipes to the extent required by the New York city energy conservation code due to conflicts with existing construction, pipes shall be insulated to the extent that space allows.

## \*ARTICLE 317 COOLING TOWERS

\*Section 28-317 was added by: [Local Law 77 of 2015](#). This law has an effective date of August 18, 2015.

**\*§28-317.1 General.** All owners of cooling towers shall comply with this article and the rules of the department.

\*Section 28-317.1 was added by: [Local Law 77 of 2015](#). This law has an effective date of August 18, 2015.

**\*§28-317.2 Definitions.** As used in this article, the following terms shall have the following meanings:

**COOLING TOWER.** The term "cooling tower" means a cooling tower, evaporative condenser or fluid cooler that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system.

\*Section 28-317.2 was added by: [Local Law 77 of 2015](#). This law has an effective date of August 18, 2015.

**\*§28-317.3 Registration.** All owners of cooling towers shall register such towers with the department prior to initial operation in a form and manner as required by the commissioner and shall include, at a minimum, the following information:

1. Address of the building at which the cooling tower is located;
2. Intended use of cooling tower;
3. Name, address, telephone number and email address of owner;
4. Manufacturer of the cooling tower;
5. Model number of the cooling tower;
6. Specific unit serial number of the cooling tower;
7. Cooling capacity (tonnage) of the cooling tower;
8. Basin capacity of the cooling tower; and
9. Commissioning date of the cooling tower.

**Exception:** Owners of existing cooling towers shall register such towers within 30 days after the effective date of this section.

**\*§28-317.3.1 Discontinued use.** The owner or operator of a cooling tower shall notify the department within 30 days after removing or permanently discontinuing use of a cooling tower. Such notice shall include a statement that such cooling tower has been drained and sanitized in compliance with the requirements of the department of health and mental hygiene for discontinuance of a cooling tower.

\*Sections 28-317.3 & 28-317.3.1 were added by: [Local Law 77 of 2015](#). This law has an effective date of August 18, 2015.

**\*§28-317.4 Inspecting, cleaning, disinfecting and testing.** All cooling towers shall be inspected, tested, cleaned and disinfected in accordance with section 17-194.1 of the administrative code and the rules of the department of health and mental hygiene.

*\*Section 28-317 was added by: [Local Law 77 of 2015](#). This section shall take effect upon the promulgation of rules by the Department of Health and Mental Hygiene.*

**\*§28-317.5 Annual certification.** The owner or operator of a cooling tower shall file a certification each year that such cooling tower was inspected, tested, cleaned and disinfected in compliance with section 17-194.1 of the administrative code and the rules of the department of health and mental hygiene, and that a maintenance program and plan has been developed and implemented as required by such section. Such certification shall be submitted by November 1, 2016 and by November 1 of each year thereafter, or as otherwise specified in the rules of the department.

*\*Section 28-317.7 was added by: [Local Law 77 of 2015](#). This law has an effective date of August 18, 2015.*

**\*§28-317.6 Fees.** The department may charge filing fees for registration, discontinuing of use and annual certification as set forth in the rules of the department.

*\*Section 28-317.7 was added by: [Local Law 77 of 2015](#). This law has an effective date of August 18, 2015.*

**\*§28-317.7 Enforcement.** Failure to register a cooling tower or submit a certification or statement required by this article shall be classified as a major violation.

*\*Section 28-317.7 was added by: [Local Law 77 of 2015](#). This law has an effective date of August 18, 2015.*

## **\*ARTICLE 318 PERIODIC INSPECTION OF GAS PIPING SYSTEMS**

**\*§28-318.1 General.** Commencing January 1, 2019, building gas piping systems, other than gas piping systems of buildings classified in occupancy group R-3, shall be periodically inspected in accordance with this article.

**Exception:** A building that contains no gas piping and for which the owner of such building has submitted to the commissioner, in a form and manner determined by the commissioner, a certificate of a registered design professional, or a person satisfying other qualifications that the commissioner may establish, that such building contains no gas piping.

**\*§28-318.2 Frequency of inspection.** An inspection of a building's gas piping system shall be conducted at periodic intervals as set forth by rule of the commissioner, but such inspection shall be conducted at least once every five years.

### **Exceptions:**

1. If the New York state public service commission adopts a rule or other requirement for periodic inspections of service lines, as defined in section 255.3 of title 16 of the New York codes, rules and regulations, with a frequency other than five years, the commissioner may, by rule, require that the periodic inspections required by this article be conducted with such frequency.
2. The initial inspection for a new building shall be conducted in the tenth year after the earlier of (i) the issuance by the department of a letter of completion or, if applicable, a temporary or final certificate of occupancy for such building or (ii) the date such building was completed as determined by department rule.

**\*§28-318.3 Inspection process.** Gas piping systems shall be inspected and tested in accordance with sections 28-318.3.1 through 28-318.3.4.

**\*§28-318.3.1 Inspection entity.** Inspections of gas piping systems shall be conducted on behalf of the building owner by a licensed master plumber or by an individual under the direct and continuing supervision of a licensed master plumber, with appropriate qualifications as prescribed by department rule.

**\*§28-318.3.2 Scope.** At each inspection, in addition to the requirements prescribed by this article or by the commissioner, all exposed gas lines from point of entry of gas piping into a building, including building service meters, up to individual tenant spaces shall be inspected for evidence of excessive atmospheric corrosion or piping deterioration that has resulted in a dangerous condition, illegal connections, and non-code compliant installations. The inspection entity shall also test public spaces, hallways, corridors, and mechanical and boiler rooms with a portable combustible gas detector to determine if there is any gas leak, provided that such testing need only include public spaces, hallways and corridors on floors that contain gas piping or gas utilization equipment.

**\*§28-318.3.3 Report and certificate of inspection.** The inspection entity conducting an inspection of a building pursuant to this article and the owner of such building shall comply with the following requirements:

1. No later than 30 days after such inspection, such inspection entity shall submit to such owner (i) a report of such inspection, on a form and in a manner determined by the department, and (ii) a certification of the licensed master plumber who performed or exercised direct and continuing supervision over such inspection that an inspection pursuant to this article has been completed for such building. Such report shall be certified by such licensed master plumber and, where applicable, by any individual who performed such inspections under the direct and continuing supervision of such licensed master plumber, and shall include, for each gas piping system inspected, a list of conditions including instances where a part or parts of such system is worn to such an extent that the safe and reliable operation of such system may be affected, gas leaks, any observed non-code compliant installations or illegal connections, any conditions described in section 28-318.3.4 and any additional information required by the department.
2. No later than the due date for such inspection, in accordance with department rules, and no earlier than 60 days before such due date, such owner shall submit a certification from a licensed master plumber that an inspection pursuant to this article has been completed by such licensed master plumber for such building, provided that the department may by rule establish an alternative timeframe for such submissions.
3. No later than 90 days after the due date for such inspection, in accordance with department rules, such owner shall electronically submit, or cause to be submitted by such inspection entity, such report to the utility company providing gas service to such building. Such submission shall only be required if, before the date that such submission would be required, the department has determined and set forth in a rule that such utility company will accept such electronic submission at no cost to such owner.
4. No later than 120 days after the due date for such inspection, in accordance with department rules, such owner shall submit to the department, in a form and manner determined by the department, (i) a certification from a licensed master plumber that all conditions that were identified in the inspection report for which a certification was submitted pursuant to item 2 of this section have been corrected, except that such certification may note that correction of one or more conditions identified in such report, other than conditions referred to in section 28-318.3.4, will reasonably take additional time to complete and (ii) a certification from such owner that such owner is in compliance with item 3 of this section. If such certification notes that one or more conditions will take additional time to complete, such owner shall, no later than 180 days after the due date for such inspection, submit to the department, in a form and manner determined by the department, a certification from a licensed master plumber that all conditions identified in such report have been corrected.
5. All reports and certifications required by this section shall be kept on file by the inspection entity and the building owner for at least eight years after the date of inspection and made available to the department at the department's request.

**\*§28-318.3.4 Reporting and correction of unsafe or hazardous condition.** If an inspection reveals any of the following conditions, the inspection entity shall notify the building owner, the utility and the department immediately and the building owner shall immediately take action to correct such condition in compliance with the New York city construction codes:

1. A gas leak;
2. Evidence of illegal connections or non-code compliant installations; or
3. Any other condition which (i) if verified by a utility company or utility corporation, would constitute a class A condition as described in part 261 of title 16 of the New York codes, rules and regulations or (ii) constitutes an imminently dangerous condition.

**\*§28-318.4 Fees.** The department may charge filing fees for the certifications required by section 28-318.3.3, as set forth in the rules of the department.

**\*§28-318.5 Enforcement.** Failure to submit a certification required by this article shall be classified as a major violation.

*\*Section 28-318 was added by: [Local Law 152 of 2016](#). This law has an effective date of December 6, 2016.*

## CHAPTER 4

# LICENSING AND REGISTRATION OF BUSINESSES, TRADES AND OCCUPATIONS ENGAGED IN BUILDING WORK

### ARTICLE 401 GENERAL

**§28-401.1 Application.** This chapter shall apply to the licensing and registration of businesses, trades and occupations engaged in building work regulated by this code.

**§28-401.2 General requirements for all licenses.** The provisions of this article shall apply to all licenses issued by the department pursuant to this chapter. All applicants and licensees shall comply with the provisions of this article as well as the specific requirements applicable to the particular license as set forth in other articles of this chapter.

**§28-401.3 Definitions.** As used in this chapter the following terms shall have the following meanings unless the context or subject matter requires otherwise.

**CERTIFICATE OF COMPETENCE.** A certificate issued by the department to an individual representing that such individual has completed all requirements for the master plumber or master fire suppression piping contractor license but has not obtained a seal or plate; and that such certificate of competence has been renewed as required and is currently in effect. The certificate of competence shall bear the name of the holder and the certificate number. The holder of a certificate of competence is not a licensed master plumber or licensed master fire suppression piping contractor and may practice the trade for which the certificate is issued only under the direct and continuing supervision of a licensed master plumber or licensed master fire suppression piping contractor or, with respect to a city employee under the direct and continuing supervision of a supervising licensed master plumber or licensed master fire suppression piping contractor.

**CITY AGENCY.** A city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid, in whole or in part, from the city treasury.

**COMBINED STANDPIPE SYSTEM.** A standpipe to which a sprinkler system is connected or is being connected.

**DIRECT AND CONTINUING SUPERVISION.** Responsible control exercised by a licensed individual, either personally or through one or more, but no more than three, levels of competent supervision over individuals performing the actual work of the licensees trade who are (i) in the direct employ of an individual who is a licensee, or (ii) in the direct employ of the city agency employing the licensee or (iii) in the direct employ of a business employing the licensee, as allowed by the department, or (iv) where the licensee uses his or her license on behalf of a business, in the direct employ of such business provided that such business is disclosed to the department pursuant to this chapter. Such control shall be evidenced by such licensee's signature, and seal where applicable, upon any required statements, applications and/or permits and by demonstrating involvement of the licensee in the operations of the business, including hiring of employees, responsibility for financial matters, and oversight of work performance. Direct and continuing supervision includes field inspection, supervision of job sites, and the maintenance of records of such supervision and such other requirements as the commissioner may prescribe by rule for a particular license type.

**DIRECT EMPLOY.** An individual is in the direct employ of a licensee or business or a city agency when such individual is on the payroll of such licensee or business or city agency and under the usual common law rules applicable in determining the employer-employee relationship has the status of an employee. The work performed by such employee shall not exceed the class of license held by the licensee. Direct employment shall be evidenced by payroll records, such as social security payments, income tax withholding or the disbursement of other funds as required by law for the benefit of such employee, timekeeping records, such as time cards and sign-in sheets, work orders, and assignment or route logs.

**FIRE SUPPRESSION PIPING WORK.** The installation, maintenance, repair, modification, extension, or alteration or testing of a fire suppression piping system in any building in the city of New York.

**FIRE SUPPRESSION PIPING SYSTEM.** Any system including any and all equipment and materials in connection therewith, with the exception of any electrical components that must be installed by a licensed electrician pursuant to the New York city electrical code, the purpose of which is to control, contain, suppress or extinguish fire and shall include:

1. The systems, materials and equipment described or referred to in this code (with the exception of any electrical components that must be installed by a licensed electrician pursuant to the New York city electrical code) which systems, materials or equipment shall include any standpipe system to which a sprinkler system is or is now being connected; provided, however, that such systems, materials or equipment shall not include any systems, materials or equipment constituting plumbing work, with the exception of up to thirty sprinkler heads off the domestic water in any one building; or
2. Any dry, liquid or gaseous chemical fire containment, suppression, control or extinguishing system or any other device or means of control, suppression, containment or extinguishing of fire (with the exception of any electrical components that must be installed by a licensed electrician pursuant to the New York city electrical code) but not including portable fire

extinguishers.

**GENERAL CONTRACTOR.** An individual, corporation, partnership or other business entity that applies for a permit pursuant to this code to construct a new residential structure containing no more than three dwelling units. The term “general contractor” shall not be construed to include an individual, corporation, partnership or other business entity that holds a license pursuant to this code or subchapter twenty-two of chapter two of title twenty of the administrative code, and enters into a contract to perform work exclusively within the scope of such license, nor shall it include an individual who constructs a residential structure containing no more than three dwelling units for his or her own occupancy, or any subcontractors working for the general contractor.

**HIGH-PRESSURE BOILER.** A boiler that carries a pressure of more than fifteen pounds of steam per square inch and is rated in excess of ten horsepower, or that produces hot water over a pressure of one hundred sixty pounds per square inch or at a temperature over 250°F (121°C).

**LICENSE.** A license, registration, certification or other evidence, issued by the department pursuant to this chapter, representing that an individual, a sole proprietorship, partnership, corporation, business association or other person meets the qualifications and requirements as set out in this chapter and in the rules of the department and is authorized to engage in the particular trade, occupation or business as indicated on the license and representing that such license, with associated plate and/or seal, where applicable, has been renewed as required and is currently in effect. The license shall bear the holder’s full name, the type of license, the license class, where applicable, the license number and any restrictions relating to the use of such license. Such term shall not include a certificate of competence.

**LICENSE BOARD OR BOARD.** A panel of trade practitioners and others appointed by the commissioner as provided herein and in rules promulgated by the commissioner with the purpose of advising the commissioner regarding the character and fitness of applicants for a license or certificate of competence, allegations of illegal practices by persons licensed, or other matters as the commissioner may see fit.

**LICENSED MASTER FIRE SUPPRESSION PIPING CONTRACTOR, MASTER FIRE SUPPRESSION PIPING CONTRACTOR.** An individual who has satisfied the requirements of this chapter for the master fire suppression piping contractor license, who has been issued a license, plate and/or seal, and who is authorized under the provisions of this chapter to perform fire suppression piping work in the city of New York, according to the classification of license held. A master fire suppression piping contractor licensee shall practice his or her trade in association with a master fire suppression piping contractor business or as an employee of a city agency.

**LICENSED MASTER PLUMBER, MASTER PLUMBER.** An individual who has satisfied the requirements of this chapter for the master plumber license, who has been issued a license, plate and/or seal, and who is authorized under the provisions of this chapter to perform plumbing work in the city of New York. A master plumber licensee shall practice his or her trade in association with a master plumber business or as an employee of a city agency.

**PLATE.** A plaque issued by the department to a master plumber or a master fire suppression piping contractor setting forth the licensee’s name and number, the class of license and the master plumber business or master fire suppression piping contractor business operating pursuant to the plate, and displayed prominently and conspicuously on view to the public at the place of business registered with the department. The plate is the property of the department and is not transferable by the licensee.

**PLUMBING WORK.** The installation, maintenance, repair, modification, extension or alteration of plumbing, standpipe where a sprinkler is not connected or is not now being connected, domestic water, connections to the domestic water, combination domestic water and reserve standpipe supply tank up to and including the roof tank check valve, gas piping or any piping system referred to in the New York city plumbing code, and/or up to thirty sprinkler heads off the domestic water in any building in the city of New York.

**PRIVATE ELEVATOR INSPECTION AGENCY.** An approved agency authorized by the commissioner to operate as an independent contractor for the purpose of inspecting and testing elevators, escalators and other conveying equipment regulated by this code and shall include but shall not be limited to an insurance company, elevator maintenance company, elevator manufacturer or elevator inspection company.

**SAFETY REGISTRATION RECIPIENT.** An individual, corporation, partnership or other business entity that applies for a permit to perform or performs, or supervises any work that requires the filing under this code of an application for (i) a new building permit; (ii) an alteration permit for work that involves a vertical or horizontal enlargement in excess of twenty-five percent of the floor area of an existing building; (iii) an alteration permit for work that involves the addition of three or more stories to an existing building; (iv) an alteration permit for work that involves alteration or demolition of more than fifty percent of the floor area of an existing building; (v) an alteration permit where the work will result in the removal of one or more floors of an existing structure; (vi) a demolition permit; or (vii) an individual, corporation, partnership or other business entity that places concrete in a building or building site in connection with excavations, foundations or superstructures, including but not limited to the placement of concrete in steel structures, where the concrete portion of the project involves the pouring of a minimum of two thousand cubic yards of concrete or such other amount as determined by rule.

**SEAL.** Emblem issued by the department to a licensee that allows the licensee to stamp documents required by this code to be signed and sealed. The seal shall bear the full name of the licensee, the license type, the license class, where applicable, and the license number. The seal is the property of the department and is not transferable by the licensee. For applications and other

documents submitted electronically, the digital signature and imprint of the seal may be submitted in a manner authorized by the commissioner.

**SIGN.** A sign as defined in section 12-10 of the zoning resolution.

**TOTAL BOOM.** A boom including jibs and other extensions.

**§28-401.4 Requirement of license.** It shall be unlawful for any person to engage in or carry on in the city any business, trade or occupation regulated by this chapter or to hold himself or herself out as authorized to engage in or carry on such activity, without having first obtained a license from the commissioner in accordance with and subject to the provisions of this chapter and the rules of the department. A license issued by the department for any such business, trade or occupation prior to July 1, 2008 shall remain in full force and effect until the expiration or termination thereof in accordance with the terms thereof, unless sooner revoked or suspended for cause as hereinafter provided. Any renewal of such license shall be in accordance with the provisions of this code.

**§28-401.5 Application and conditions.** Every application for a license or certificate of competence shall be made in such form and shall be accompanied by such information as the commissioner may prescribe, and by the required fee. It is a condition of the license or certificate of competence that information in the application be kept correct and current. Any change in required information shall be reported to the department within fourteen days after any change prior to issuance of the license or certificate of competence or within thirty days after any change following issuance.

**§28-401.6 Qualifications of applicant.** All applicants for a license or certificate of competence shall be at least 18 years of age, shall be able to read and write the English language, shall be of good moral character, shall be fit to perform work authorized by the particular license or certificate of competence, and shall meet additional qualifications that may be prescribed for the particular license or certificate of competence. The department may refuse to qualify an applicant if it has found that the applicant violated any law, rule, or regulation of the department resulting in the suspension or revocation of a department issued license.

**§28-401.7 Examination of applicant.** Except as otherwise specified for the particular license type, applicants for a license shall be required to take an examination in accordance with the rules of the department. Every applicant shall commence the license application process with the department within one year of passing the examination for licensure and shall furnish to the department a completed license application within one year of submission of the first filing. Failure to provide all requested documents in a timely manner will constitute an incomplete application and will result in denial of the license.

**§28-401.8 Investigation of applicant.** Every applicant for a license or certificate of competence shall submit to investigation as directed by a governmental entity in order to determine the applicant's character and fitness. The applicant shall furnish the department with payment for the actual cost of conducting the background investigation. Failure to provide all requested and completed documents or any other information necessary for completion of the investigation in a timely fashion will constitute an incomplete application and will result in a denial of the license or certificate of competence.

**§28-401.9 Insurance.** Except as noted otherwise for a particular license, or exempted by the commissioner pursuant to rule, prior to the issuance of a license, or during the renewal thereof, the applicant shall file with the department satisfactory evidence of a commercial general liability insurance policy in the amount of one million dollars or such other amount as the commissioner may require together with satisfactory evidence of compliance with the workers' compensation law and the disability benefits law. Required insurance shall be maintained for the duration of the license and any changes in coverage, insurance renewals, or policy status shall be provided to the department in accordance with department rules.

**§28-401.10 Issuance of license, plate and/or seal, where applicable, or certificate of competence.** The commissioner shall issue a license or certificate of competence to each applicant who shall have submitted satisfactory evidence of his or her qualifications, and shall have satisfactorily passed all required examinations and investigations, provided that no license or certificate of competence shall be issued unless and until the applicant shall have paid the required fee and complied with such other and further requirements for the particular license or certificate of competence as may be set forth in this chapter and in rules promulgated by the department. All licenses or certificates of competence issued by the commissioner shall have his or her signature affixed thereto; but the commissioner may authorize any subordinate to affix such signature. For licenses that require a plate and/or the application of a seal, the plate and/or seal shall be issued with the license except as provided otherwise in this chapter. The license, plate and seal are the property of the department and are not transferable by the licensee. No licensee shall make or cause to be made duplicates of a department-issued license, plate or seal. The loss or theft of a license, plate or seal must be reported to the department within five calendar days.

**§28-401.11 Term of license.** All licenses issued by the commissioner for which an examination is required shall expire three years from the date of issuance thereof, and may be renewed every three years thereafter without examination. The commissioner shall have authority to stagger the issuance of licenses for three-year terms. All licenses not requiring examination shall expire one year from the date of issuance thereof, and may be renewed each year thereafter except as otherwise noted for a specific license.

**§28-401.12 Renewal of license or certificate of competence.** Applications for renewal of a license or certificate of competence shall be accompanied by the renewal fee and such additional information as the commissioner may require, and shall be made at least 30 calendar days but not more than 60 calendar days prior to the expiration date of same. Applicants shall provide evidence satisfactory to the department that he or she is fit to perform the work authorized by the particular license as provided by department rule. Applications for renewal are subject to investigation by the department. The failure of an individual to renew his or her license or certificate of competence shall have the effect of cancellation of the license or certificate of competence upon expiration, and the

holder of a plate and/or seal issued by the department shall immediately surrender such plate and/or seal to the department. A person who fails to renew a license or certificate of competence within the time period set forth in this section 28-401.12 may apply for late renewal or reinstatement of such license pursuant to section 28-401.13. The department may, following notice and an opportunity to be heard, refuse to renew a license or certificate of competence on any grounds on the basis of which it could deny, suspend or revoke such license.

**§28-401.13 Late renewal and reinstatement.** If a license or certificate of competence expires, the individual may apply for late renewal of the license or certificate of competence, within one year of the date of its expiration without examination but subject to applicable late renewal fee. Thereafter, and up to five years after the date of expiration, the commissioner may reinstate the license or certificate of competence without examination upon the applicant’s demonstration to the commissioner’s satisfaction of continued competence in the respective trade and satisfaction of any applicable continuing education requirements but subject to applicable late renewal and reinstatement fees. Applicants for late renewal and reinstatement shall provide evidence satisfactory to the department that he or she is fit to perform the work authorized by the particular license as provided by department rule. A license or certificate of competence shall not be reinstated after five years from date of expiration. The department may refuse to reinstate a license or certificate of competence on any grounds on the basis of which it could deny, suspend or revoke such license.

**§28-401.14 Continuing education.** The commissioner may promulgate rules to require applicants for the renewal of licenses or certificate of competence to complete a prescribed number of hours of continuing education courses approved by the department within the term preceding the application for renewal and to provide proof of same in a form acceptable to the department. Such proof, when required, shall be submitted with the application for renewal.

**§28-401.15 Schedule of fees.**

LICENSE TYPE	INITIAL FEE	RENEWAL FEE	ADDITIONAL FEES
Master rigger license.	\$200	\$150 triennially	Late-renewal fee: \$50 Reissuance fee: \$50
Special rigger license.	\$100	\$75 triennially	Late-renewal fee: \$50 Reissuance fee: \$50
Basic hoisting machine operator license (Class A).	\$150	\$150 triennially	Late-renewal fee: \$50 Reissuance fee: \$50
Basic hoisting machine operator license with endorsement to operate hoisting machinery without limitation or restriction (Class B).	\$200	\$150 triennially	Late-renewal fee: \$50 Reissuance fee: \$50
Special hoisting machine operator license (Class C).	\$100	\$75 triennially	Late-renewal fee: \$50 Reissuance fee: \$50
Concrete testing laboratory license.	\$100	\$75 annually	Late-renewal fee: \$50 Reissuance fee: \$50
Welder license.	\$50	\$45 triennially	Late-renewal fee: \$50 Reissuance fee: \$50
Master plumber license (certificate of competence).	\$200	\$150 triennially	Late-renewal fees: Up to 30 days late, \$50; From 31 days to five years late, \$100 for each year or part thereof. Reissuance fee: \$50
Master plumber license plate.	\$75	\$100 triennially	Replacement fee upon loss of plate, w/affidavit: \$100
Master plumber license seal.	\$50	\$75 triennially	Replacement fee upon loss of seal, w/affidavit: \$75
Journeyman plumber registration.	\$50		No renewal, no reissuance.
Master fire suppression piping contractor (class A, B or C) license (certificate of competence).	\$200	\$150 triennially	Late-renewal fees: Up to 30 days late, \$50; From 31 days to five years late, \$100 for each year or part thereof. Reissuance fee: \$50
Master fire suppression piping contractor (class A, B or C) license plate.	\$75	\$100 triennially	Replacement fee upon loss of plate, w/affidavit: \$100
Master fire suppression piping contractor (class A, B or C) license seal.	\$50	\$75 triennially	Replacement fee upon loss of seal, w/affidavit: \$75
Journeyman fire suppression piping installer registration.	\$50		No renewal, no reissuance.

Oil-burning equipment installer. License (class A or B).	\$100	\$75 triennially	Late-renewal fee: \$50 Reissuance fee: \$50
High-pressure boiler operating engineer license.	\$50	\$45 triennially	Late-renewal fee: \$50 Reissuance fee: \$50
Portable high-pressure boiler operating engineer license.	\$50	\$45 triennially	Renewal fee includes renewal fee for a hoisting machine operator license. Late-renewal fee: \$50 Reissuance fee: \$50
Master sign hanger license.	\$100	\$75 triennially	Late-renewal fee: \$50 Reissuance fee: \$50
Special sign hanger license.	\$100	\$75 triennially	Late-renewal fee \$50 Reissuance fee: \$50
Outdoor advertising company registration.	As provided by dept rules.	As provided by dept rules.	As provided by dept rules.
Filing representative registration.	As provided by dept rules.	As provided by dept rules.	As provided by dept rules.
Reinstatement of expired license, certificate of competence or certification without examination, if approved by commissioner, in addition to applicable renewal fees.	Same as initial license.		\$100 for each year or part thereof from date of expiration
Site safety coordinator certificate.	\$100	\$50	Late-renewal fee \$50 Reissuance fee: \$50
Site safety manager certificate.	\$300	\$150	Late-renewal fee \$50 Reissuance fee: \$50
General contractor registration.	\$300	\$240 triennially	Late-renewal fee \$50 Reissuance fee: \$50
Tower crane rigger license.	\$150	\$50 triennially	Late-renewal fee \$50 Reissuance fee: \$50
Safety registration number (concrete contractor, demolition contractor, general contractor)	\$80 each	\$80 triennially	Late-renewal fee: \$50 Reissuance fee: \$50

**§28-401.16 Restrictions on use of license.** No holder of a license issued under this chapter shall authorize, consent to or permit the use of his or her license by or on behalf of any other person, and no person who has not qualified and obtained or renewed a license under this chapter shall hold himself or herself out to the public as licensed, certified, registered or as the holder of a license issued under this chapter, either directly or indirectly, by means of signs, sign cards, plates, stationery, or in any other manner whatsoever.

**§28-401.17 Use on behalf of a business.** Except for such additional requirements as may be set forth for a particular license, nothing in this chapter shall be construed to prohibit the use of a license by the holder thereof for or on behalf of a partnership, corporation or other business association, provided that such business entity is disclosed to the department in a manner required by the department and where:

1. At least one member of the partnership or at least one officer of the corporation is licensed for the same business, trade or occupation, and that all work performed by such partnership or corporation is performed by or under the direct and continuing supervision of such license holder or holders; or
2. Such partnership, corporation or other business association is itself authorized to engage in such business as prescribed herein.

**§28-401.17.1 Use on behalf of a city agency.** Nothing in this chapter shall be construed to prohibit the holder of a license who is an employee of a city agency from using such license to practice the trade for which such license is issued for or on behalf of such city agency in the course of such employment except as otherwise limited pursuant to articles 408 and 410 of this chapter for licensed master plumber and licensed master fire suppression piping contractor licensees.

**§28-401.18 New York city location required.** Except as otherwise noted for a particular license, the holder of a license, other than an employee of a city agency, shall have or be employed by a business entity that has an established place of business with an address within the city of New York at which such person can be contacted by the public and the department by mail, telephone or other modes of communication. A post office box is not an acceptable address.

**§28-401.19 Suspension or revocation of license or certificate of competence.** The commissioner shall have the power to suspend or

revoke a license or certificate of competence and/or to impose a fine not to exceed twenty-five thousand dollars for each finding of violation, and/or to order any holder thereof to repair damage resulting from any act or omission as set forth in this chapter or in rules, for any of the following:

1. Fraud or deceit in obtaining or renewing a license, plate or seal, certificate of competence, certification, registration, or permit;
2. The making of a material false or misleading statement on any form or report filed with the department or other governmental entity;
3. The failure to file a statement, report or form required by law to be filed;
4. Willfully impeding or obstructing the filing of a statement, report or form of another required by law to be filed;
5. Fraudulent dealings;
6. Negligence, incompetence, lack of knowledge, or disregard of this code and related laws and rules;
7. Failure to comply with this code or any order, rule, or requirement lawfully made by the commissioner including failure to cooperate with investigations related to the trade for which the individual is licensed conducted by the commissioner or other government entity;
8. Failure to comply with any order, rule, regulation or requirement lawfully made by the commissioner of environmental protection or commissioner of transportation pertaining to water services, house connections street openings, street/lane closures or sidewalk closures that relate to requirements of this code;
9. A practice or pattern of failing timely to perform or complete contracts relating to home improvements as defined by section 20-3 86 of the administrative code or a practice of abandoning contracts on residential buildings containing four dwelling units or less;
10. Failure to provide documents, including payroll records, workers compensation or other insurance documents, employee timekeeping records and corporate tax returns, required by the commissioner;
11. Engaging or assisting in any act that endangers the public safety and welfare;
12. Conviction of a criminal offense where the underlying act arises out of the individual's professional dealings with the city or any other governmental entity;
13. Poor moral character that adversely reflects on his or her fitness to conduct work regulated by this code; or
14. Failure to pay outstanding fines, penalties, or fees related to the individual's professional dealings with the city or any other governmental entity.
15. With respect to general contractor registration, upon a finding that the applicant or registrant or a business entity in which one of the applicant's or registrant's principals, officers or directors is a principal, officer or director has engaged in any of the acts set forth in items 1 through 14 or any of the following:
  - 15.1. Fraud, misrepresentation or bribery in securing a sign-off of work or a temporary or permanent certificate of occupancy.
  - 15.2. A practice on the part of the registrant of failure to timely perform or complete its contracts for the construction of new residential structures containing no more than three dwelling units, or the manipulation of assets or accounts, or fraud or bad faith.
  - 15.3. Approval or knowledge on the part of the registrant of an act of omission, fraud, or misrepresentation committed by one or more agents or employees of the registrant, and failure to report such act to the department.
  - 15.4. The applicant or registrant, or any of its principals, officers or directors, or any of its stockholders owning more than ten percent of the outstanding stock of the corporation has been convicted of a crime which, in accordance with article twenty-three-a of the correction law, is determined to have a direct relationship to such person's fitness or ability to perform any of the activities for which a registration is required under this article.
  - 15.5. The applicant or registrant, or any of its principals, officers or directors has been or is a principal, officer or director of a registered general contractor whose registration has been revoked.

**28-401.19.1 Notice and hearing.** The commissioner shall not revoke or suspend a license or certificate of competence for any cause or impose any other sanction on a licensee unless and until the holder has been given at least five calendar days prior written notice and an opportunity to be heard. However, when the public safety may be imminently jeopardized the commissioner shall have the power, pending a hearing and determination of charges, to forthwith suspend any license for a period not exceeding 15 days.

**§28-401.19.2 Resolution of proceedings.**

1. **Surrender of plate or seal.** Upon surrender, suspension or revocation of a license for which the department has also issued a plate or seal, the license and such plate and/or seal shall be immediately surrendered to the department.
2. **Posting of resolution of proceedings.** The names of all licensees whose licenses were suspended or revoked or upon whom penalties have been imposed after a department determination following an office of administrative trials and hearings

(OATH), or its successor agency, as applicable, report and recommendation shall be posted on the department's website. The department shall post the names of the licensees who have entered into stipulations with the department unless the stipulation agreed to by the parties provides otherwise.

**§28-401.19.3 Reinstatement fees.** The fees required for the reinstatement of a certificate of competence or license, plate or seal after suspension shall be the same as those required to obtain an original document. If reinstatement of the certificate of competence, license, plate or seal is not requested within 30 days of the lifting of the suspension, then late fees shall be imposed in accordance with article 119 of chapter 1 of this title.

**§28-401.19.4 Mandatory suspension or revocation.** The commissioner shall immediately suspend or revoke a license issued pursuant to this code as set forth below. Nothing in the following sections shall be construed to limit the commissioner's power to revoke or suspend licenses in other circumstances.

**§28-401.19.4.1 Rigger license.** Any licensed rigger who has been found guilty after proceedings before the environmental control board or other adjudicative proceedings of violating section 28-404.1 or 28-401.9 of the administrative code or sections 3314.1.1 and 3314.4.3.1 of the New York city building code, or of failing to insure that workers have certificates of fitness required pursuant to this code or applicable rule three times within any six-month period, shall be subject to immediate suspension of his or her license pending a hearing and determination in accordance with the provisions of this code.

**§28-401.19.4.2 General contractor registration.** Any registered general contractor who has defaulted at or been found liable after proceedings before the environmental control board or in an adjudication in criminal court of violations of any provisions of this code relating to a stop work order, public health or safety, structural integrity, building in compliance with approved construction documents or fire safety three times within any twenty-four-month period shall be subject to immediate suspension of his or her registration, pending a hearing and determination at office of administrative trials and hearings (OATH) or its successor agency, as applicable.

**§28-401.20 Cooperation required.** Any person, including any corporation, partnership, business or other entity, issued a license or certificate of competence by the department shall, pursuant to a request or order of the commissioner or any other city agency or office, cooperate fully and completely with respect to any department or city agency or office investigation. Evidence of cooperation shall include, but is not limited to, appearing before the department or other city agency or office, answering questions completely and accurately, and providing any and all requested documents. Failure to comply with such request or order may subject such person to disciplinary measures authorized by law, including but not limited to suspension or revocation of the license or certificate of competence.

**§28-401.20.1 Service of request or order.** Such request or order by the commissioner or other city agency or office shall be mailed by regular mail to the person named therein to his or her last known business or home address at least ten days before such appearance and shall contain the name of the person, date, time and place of such appearance and, if known or applicable, a description of any requested documents. If the appearance or information is required immediately, the request or order may be transmitted via facsimile or delivered to the person's last known business or home address prior to the date and time specified therein.

**§28-401.21 Judicial review of determinations.** Notwithstanding any other provision of law to the contrary, decisions, orders and interpretations of the commissioner made pursuant to this chapter shall not be subject to review by the board of standards and appeals. Final decisions and orders of the commissioner made pursuant to this chapter shall be subject to review pursuant to article 78 of the civil practice law and rules.

**§28-401.22 Deactivation of license.** In the event that the holder of a license is no longer actively engaged as a licensee in a trade or business licensed by the department, the licensee may submit his or her license for deactivation pursuant to department rules. During the period of deactivation, the licensee must continue to pay the license renewal fee required under this chapter for each year of the deactivation period. The holder of a deactivated license may not practice in the trade or business as a licensee or hold himself or herself out as a licensee during the period of deactivation. Application for reactivation of a deactivated license without reexamination shall be made within a time period prescribed by rule and subject to a demonstration of work experience in the trade satisfactory to the commissioner during the time that the license was deactivated.

## **ARTICLE 402 SITE SAFETY MANAGER CERTIFICATE**

**§28-402.1 Certificate required.** It shall be unlawful to perform the duties and responsibilities of a site safety manager as specified in chapter 33 of the New York city building code unless such work is performed by a person certified as a site safety manager under the provisions of this article.

**§28-402.2 Qualifications.** All applicants for a site safety manager certificate shall submit satisfactory proof establishing that the applicant:

1. Is a registered design professional and has three years of experience supervising construction or demolition of major buildings as the term major building is defined in chapter 33 of the New York city building code, and within one year prior to application

has satisfactorily completed a 40-hour course approved by the department;

2. Has a Certified Safety Professional (“CSP”) designation from the Board of Certified Safety Professionals (“BCSP”) and has three years of experience supervising construction or demolition of major buildings as the term major building is defined in chapter 33 of the New York city building code, and within one year prior to application has satisfactorily completed a 40-hour course approved by the department;
3. Has eight years of construction supervision experience within the 10 years prior to application, including five years supervising construction or demolition of major buildings as the term major building is defined in chapter 33 of the New York city building code, and within one year prior to application has satisfactorily completed a 40-hour course approved by the department;
4. Has completed an 18 month on-the-job training program working on major buildings as that term is defined in chapter 33 under the direct and continuing supervision of a certified site safety manager. Such on-the-job training program shall conform to rules promulgated by the department. The supervising site safety manager shall certify the trainee’s satisfactory completion of the training program. In addition, the applicant shall provide proof that, within one year prior to the date of application, he or she has satisfactorily completed a 40-hour course approved by the department;
5. Has equivalent education and construction experience as determined by the department and within one year prior to application has satisfactorily completed a 40-hour course approved by the department; or
6. Has three years of experience as a certified site safety coordinator and within one year prior to application has satisfactorily completed a 40-hour course approved by the department.

#### **ARTICLE 403 SITE SAFETY COORDINATOR CERTIFICATE**

**§28-403.1 Certificate required.** It shall be unlawful to perform the duties and responsibilities of a site safety coordinator as specified in chapter 33 of the New York city building code unless such work is performed by a person certified as a site safety coordinator under the provisions of this article.

**§28-403.2 Qualifications.** All applicants for a site safety coordinator certificate shall submit satisfactory proof establishing that the applicant:

1. Is a registered design professional and has two years of experience supervising construction or demolition of major buildings as the term major building is defined in chapter 33 of the New York city building code, and within one year prior to application has satisfactorily completed an 8-hour course approved by the department;
2. Has a Construction Health and Safety Technician (“CHST”) designation from the Board of Certified Safety Professionals (“BCSP”) and has two years of experience supervising construction or demolition of major buildings as the term major buildings is defined in chapter 33 of the New York city building code, and within one year prior to application has satisfactorily completed an 8-hour course approved by the department;
3. Has five years of construction supervision or construction safety experience within the 10 years prior to application, including three years supervising construction or demolition of major buildings as the term major building is defined in chapter 33 of the New York city building code, and within one year prior to application has satisfactorily completed an 8-hour course approved by the department; or
4. Has equivalent education and construction experience as determined by the department and within one year prior to application has satisfactorily completed a 40-hour course approved by the department.

#### **ARTICLE 404 RIGGER LICENSE**

**§28-404.1 Rigger license required.** It shall be unlawful to hoist or lower any article on the outside of any building in the city unless such work is performed by or under the direct and continuing supervision of a person licensed as a rigger under the provisions of this article. The provisions of this article shall apply to the erection or dismantling of a tower crane or a climber crane on a building and to the use of a derrick in their removal, except that such erection or dismantling may be performed by or under the direct and continuing supervision of a licensed climber or tower crane rigger in accordance with rules promulgated by the department.

**Exception:** The provisions of this article shall not apply to:

1. The hoisting or lowering of signs if the person so doing possesses a license as a sign hanger, as provided in this chapter;
2. The loading or unloading of a material delivery truck if the material loaded or unloaded is not raised more than 12 feet (3658 mm) above the bed of the truck during the loading or unloading process; or
3. The hoisting or lowering of articles on the outside of a building in the city where chapter 33 of the New York city building code authorizes such articles to be hoisted or lowered by or under the supervision of a qualified and/or competent person.

**§28-404.2 Classification.** Rigger licenses shall be classified as follows:

1. **Master rigger license.** Authorizes the holder thereof to install or use a suspended scaffold, or to hoist or lower any article with a hoisting machine, irrespective of weight, on the outside of any building.
2. **Special rigger license.** Authorizes the holder thereof to:
  - 2.1. Install or use a suspended scaffold; and
  - 2.2. Hoist or lower any article not exceeding 2,000 pounds (907 kg) in weight on the outside of any building with a hoisting machine, provided the manufacturer rated capacity of such hoisting machine does not exceed 2,000 pounds (907 kg).
3. **Climber or tower crane rigger license.** Authorizes the holder thereof to assemble, jump or disassemble a tower crane or a climber crane, or to supervise such work, and to install or use a derrick(s) in conjunction with such work and supervise such installation or use of the derrick.

**§28-404.3 Additional qualifications.** Applicants for a rigger license shall have the additional qualifications as set forth in sections 28-404.3.1 through 28-404.3.3.

**§28-404.3.1 Master rigger qualifications.** All applicants for a master rigger license shall submit satisfactory proof establishing that the applicant:

1. Has at least five years of practical experience in the hoisting and rigging business within the seven years prior to application;
2. Has knowledge of and is able to explain the risks incident to such business and precautions to be taken in connection therewith, safe loads and computation thereof, types of rigging, size and strength of ropes, cables, blocks, poles, derricks, shear legs and other tools used in connection with such business; and
3. Has satisfactorily completed a department-approved training course of not less than thirty hours. Any person who, within the three years prior to the date of the application, has successfully completed at least a thirty-hour training course need not take a second thirty-hour course, provided such person can provide to the department a dated certificate as set forth in this section. Such person shall, however, take a department-approved eight-hour re-certification course within three years of the initial course and every three years thereafter. Successful completion of the training or re-certification course shall be evidenced by a dated certificate issued by the provider of the training or re-certification course. The certificate shall include such information as specified by the department by rule. The certificate, or a valid wallet card version thereof, shall be readily available to the commissioner upon request. Such training or recertification course shall be conducted (i) pursuant to a registered New York state department of labor training program, or (ii) by a provider approved by the department.

**§28-404.3.2 Special rigger qualifications.** All applicants for a special rigger license shall submit satisfactory proof establishing that the applicant:

1. Has at least one year of practical experience in the hoisting and rigging business within the three years prior to application;
2. Has knowledge of and is able to explain the risks incident to such business and precautions to be taken in connection therewith; and
3. Has satisfactorily completed a department-approved training course of not less than thirty hours. Any person who, within the three years prior to the date of the application, has successfully completed at least a thirty-hour training course need not take a second thirty-hour course, provided such person can provide to the department a dated certificate as set forth in this section. Such person shall, however, take a department-approved eight-hour re-certification course within three years of the initial course and every three years thereafter. Successful completion of the training or re-certification course shall be evidenced by a dated certificate issued by the provider of the training or re-certification course. The certificate shall include such information as specified by the department by rule. The certificate, or valid wallet card version thereof, shall be readily available to the commissioner upon request. Such training or recertification course shall be conducted (i) pursuant to a registered New York state department of labor training program, or (ii) by a provider approved by the department.

**§28-404.3.3 Climber or tower crane rigger qualifications.** All applicants for a climber or tower crane rigger license shall submit satisfactory proof establishing that the applicant:

1. Has at least five years of practical experience in the climber or tower crane rigging business within the seven years prior to application;
2. Has knowledge of and is able to explain the risks incident to such business and precautions to be taken in connection therewith, including connecting pins, cables, anchorage, platform or pad, plumb of mast, torque of bolts, supervision of rigging and hoisting of loads, placement of components, and coordination of sequencing; and
3. Has satisfactorily completed a department-approved training course of not less than thirty hours. Any person who, within the three years prior to the date of the application, has successfully completed at least a thirty-hour training course need not take a second thirty-hour course, provided such person can provide to the department a dated certificate as set forth in this section. Such person shall, however, take a department-approved eight-hour re-certification course within three years of the initial course and every three years thereafter. Successful completion of the training or re-certification course shall be

evidenced by a dated certificate issued by the provider of the training or re-certification course. The certificate shall include such information as specified by the department by rule. The certificate, or a valid wallet card version thereof, shall be readily available to the commissioner upon request. Such training or recertification course shall be conducted (i) pursuant to a registered New York state department of labor training program, or (ii) by a provider approved by the department.

**§28-404.4 Additional requirements.** The additional requirements set forth in sections 28-404.4.1 through 28-404.4.3 shall apply to licensed riggers:

**§28-404.4.1 Danger warning.** Every licensed master and special rigger shall, while rigging operations are in progress at a job site, place, conspicuously, at such job site two plates or signs not less than 18 inches (457 mm) by 24 inches (610 mm) in size (i) displaying the word “danger” in letters not less than 6 inches (152 mm) high, and (ii) disclosing the rigger’s name, business address, type of rigger license and license number.

**§28-404.4.2 Rigger place of business.** Every licensed master and special rigger shall have a place of business located within the city and shall display prominently at such place of business a plate or sign marked with the words “master rigger” or “special rigger,” respectively, and his or her license number immediately there under. A master, special and tower or climber rigger shall be a sole proprietor, a partner in the partnership or an officer of the corporation and shall be allowed to associate his or her license with only one other rigger business. Such businesses shall be located at the same place of business.

**§28-404.4.3 Fitness to perform work.** As a condition of license renewal or reinstatement, a licensed master or special rigger shall provide evidence satisfactory to the department that he or she is fit to perform the work.

## **ARTICLE 405 HOISTING MACHINE OPERATOR LICENSE**

**§28-405.1 Hoisting machine operator license required.** It shall be unlawful for any persons to take charge of or operate any power-operated hoisting machine used for hoisting purposes or cableways under the jurisdiction of the department, unless such person is licensed under the provisions of this article or is a holder of a certificate of qualification as a hoisting machine operator issued prior to December 6, 1968 and not allowed to lapse.

### **Exceptions:**

1. Operators of mobile cranes of a limited size and capacity exempted from the requirements of this article under chapter 33 of the New York city building code, or exempted in accordance with rules promulgated by the commissioner.
2. Hoisting machines with a manufacturer’s rated capacity of one ton or less.
3. Power-operated scaffolds and window-washing machines.

**§28-405.2 Classification.** Hoisting machine operator licenses shall be classified as follows:

1. **Class A license:** Basic license to operate cranes with total boom less than 200 feet (60 960 mm) in length, derricks and cableways, excluding truck-mounted tower cranes that exceed 200 feet (60 960 mm) in height.
2. **Class B license:** Endorsement on basic license to include the operation of hoisting machinery without limitation or restriction.
3. **Class C license:** Special hoisting machine operator license to operate a specified class of hoisting machine of limited size and capacity as follows:

**Class C1:** License to operate wheel mounted cranes with telescoping, hydraulic, articulating or folding booms, including jibs and any other extensions to the boom, not exceeding 200 feet in length (60 960 mm) with a manufacturer’s rated capacity of 50 tons (51 t) or less;

**Class C2:** License to operate boom trucks with telescoping, hydraulic, articulating or folding booms, including jibs and any other extensions to the boom, not exceeding 200 feet (60 960mm) in length with a manufacturer’s rated capacity of 50 tons (51 t) or less;

**Class C3:** License to operate boom trucks with telescoping, hydraulic, articulating or folding booms, including jibs and any other extensions to the boom, not exceeding 135 feet (41 148 mm) in length with a manufacturer’s rated capacity of three tons or less, used exclusively for the erection, maintenance or removal of signs.

**§28-405.3 Additional qualifications.** Applicants for a hoisting machine operator license shall have the following additional qualifications.

**§28-405.3.1 Class A license.** An applicant for a class A basic hoisting machine operator license shall have at least three years experience within the five years prior to application under the direct and continuing supervision of a licensed hoisting machine operator.

**§28-405.3.2 Class B license.** An applicant for a class B hoisting machine operator license shall have a class A basic hoisting machine operator license, and shall have at least two years experience prior to application under the direct and continuing

supervision of a Class B licensed hoisting machine operator operating the equipment for which he or she is applying for endorsement and shall satisfactorily demonstrate by operation that he or she is competent to operate a crane with a boom, including jibs and other extensions, exceeding 200 feet (60 960 mm) in length or truck-mounted tower crane exceeding 200 feet (60 960 mm) in height, or as otherwise provided in rules of the department.

**§28-405.3.3 Class C license.** An applicant for a class C special hoisting machine operator license shall have at least two years experience within the three years prior to application under the direct and continuing supervision of a licensed hoisting machine operator and have satisfactorily passed a practical examination in the operation of equipment for which such license is to be issued.

**§28-405.4 Fitness to perform work.** As a condition of license renewal and reinstatement, a licensed hoisting machine operator shall provide evidence satisfactory to the department that he or she is fit to perform the work.

**§28-405.5 Insurance exemption.** Unless otherwise required by rule, licensed hoisting machine operators are exempt from the insurance requirements of section 28-401.9.

#### **ARTICLE 406 CONCRETE TESTING LABORATORY LICENSE**

**§28-406.1 Concrete testing laboratory license required.** Testing of concrete required by this code or other applicable laws or rules shall be conducted by a concrete testing laboratory licensed in accordance with this article.

**§28-406.2 Qualifications.** All applicants for a concrete testing laboratory license shall maintain a laboratory within 50 miles (80 467 m) of the city and shall submit satisfactory proof establishing that the business is conducted by qualified personnel in accordance with procedures, safety requirements and professional standards as set forth in rules of the department. The department shall inspect an applicant's place of business and equipment and conduct an investigation of applicant's personnel in a manner to be set forth in department rules prior to the issuance or renewal of a license.

**§28-406.3 Additional requirements.** The following additional requirements shall apply to concrete testing laboratories:

**§28-406.3.1 Director.** Each laboratory shall have in responsible charge a director who shall be a full-time employee of the laboratory and shall not serve as the director of more than one licensed laboratory at a time. The director shall be a registered design professional, and shall personally supervise all technical functions of the laboratory relating to testing of concrete and concrete materials as required in this code and in rules of the department.

**§28-406.3.2 Certification of reports by director.** The director shall certify the truth and accuracy of all reports filed by the laboratory under the provisions of this code or other applicable laws and rules.

**§28-406.4 No examination required.** An examination shall not be required for a concrete testing laboratory license.

#### **ARTICLE 407 WELDER LICENSE**

**§28-407.1 Welder license required.** It shall be unlawful to perform manual welding work on any structural member of any building in the city unless such work is performed by a person licensed as a welder under the provisions of this article.

**§28-407.2 Qualifications.** All applicants for a welder license shall submit satisfactory proof of the applicant's fitness to make structural welds, including his or her ability to pass operator qualification tests as determined by the commissioner.

**§28-407.3 Fitness to perform work.** As a condition of license renewal and reinstatement, a licensed welder shall provide evidence satisfactory to the department that such licensee is fit to perform the work.

**§28-407.4 Insurance exemption.** Unless otherwise required by rule, licensed welders are exempt from the insurance requirements of section 28-401.9.

#### **ARTICLE 408 MASTER PLUMBER LICENSE**

**§28-408.1 Master plumber license required.** It shall be unlawful for any person:

1. To perform plumbing work unless such person is a licensed master plumber or working under the direct and continuing supervision of a licensed master plumber except that a city employee who holds a master plumber license may only perform replacement, maintenance and repair plumbing work on existing buildings in the course of his or her employment.
2. To use the title licensed master plumber, master plumber or any other title in such manner as to convey the impression that such person is a licensed master plumber unless such person is licensed as such in accordance with the provisions of this article.

**§28-408.2 Seal.** All documents that are required to be filed with any department or agency of the city of New York shall bear the stamp of the seal as well as the signature of the licensee. The licensed master plumber performing the work and services shall

personally sign and seal all applications and other documents required to be filed pursuant to this code.

**§28-408.3 Additional qualifications.** Applicants for a master plumber license shall have the following additional qualifications:

**§28-408.3.1 Experience.** All applicants for a master plumber license shall submit satisfactory proof establishing that the applicant:

1. Has at least seven years total experience within the 10 years prior to application in the planning or design, and installation, of plumbing systems under the direct and continuing supervision of a licensed master plumber in the United States, with at least two years of such experience as a registered journeyman plumber in accordance with the provisions of article 409, except that during the three years immediately following July 1, 2008, there shall be no requirement for such registered journeyman plumber experience;
2. Has received a bachelor's degree in mechanical engineering or appropriate engineering technology from an accredited college or university and has at least five years total experience within the seven years prior to application in the design and installation of plumbing systems under the direct and continuing supervision of a licensed master plumber in the United States, where at least two years of such experience were in New York city;
3. Is an architect or engineer with at least three years of experience within the five years prior to application in the planning or design, and installation, of plumbing systems under the direct and continuing supervision of a licensed master plumber in the United States, where at least one year of such experience was in New York city;
4. Has at least seven years total experience within the 10 years prior to application, with at least two years of such experience working in the planning or design, and installation, of plumbing systems under the direct and continuing supervision of a licensed master plumber in the United States. The balance of such required experience may be obtained by performing maintenance, replacement and repair plumbing work on existing buildings while in the employ of a city agency under the direct and continuing supervision of a licensed master plumber supervisor employed by the city agency. Three years after July 1, 2008 the two years experience in the planning or design, and installation, of plumbing systems set forth above may only be satisfied by working as a registered journeyman plumber; or
5. Has experience as an employee of a government agency, private inspection agency or other entity, acceptable to the commissioner, whose duties primarily involve the inspection of plumbing work for compliance with the New York city plumbing code and/or other laws relating to the installation, alteration or repair of plumbing systems which shall be credited for fifty percent (50%) of the number of years that he or she has been satisfactorily employed in such duties within the ten (10) year period prior to application, which, however, in no event, shall exceed two and one-half (2½) years credit of satisfactory experience. The balance of the required seven years must have been obtained by working in the planning or design, and installation, of plumbing systems under the direct and continuing supervision of a licensed master plumber in the United States except that the requirement of paragraph 1 of this section 28-408.3.1 that an applicant's working experience must have been within the ten (10) year period prior to application shall not apply to such balance of the work experience required pursuant to this paragraph.

**§28-408.3.2 Armed services.** Applicants who were engaged in plumbing work as above provided prior to entering the armed services of the United States shall be permitted to credit their time in the service as experience in the plumbing business, as above provided; but such service credit shall not exceed one-third of the time required for experience.

**§28-408.4 Certificate of competence and license, plate and/or seal.** The commissioner shall issue a certificate of competence, license, plate, and/or seal, in accordance with the following:

**§28-408.4.1 Certificate of competence.** A certificate of competence shall be issued by the commissioner to an applicant who satisfactorily complies with the experience and examination requirements of this chapter for a license, upon payment of the fee. Such certificate shall contain the full name of the individual and a certificate number, the date of issuance, and shall be signed by the commissioner.

**§28-408.4.2 Effect of issuance.** The issuance of a certificate of competence shall constitute evidence that the person named therein is qualified upon payment of applicable fees to obtain a plate and seal while the certificate is valid except that a city employee while in the employ of the city shall only be entitled to obtain a seal.

**§28-408.4.3 Plate and/or seal required.** The holder of a certificate shall not be entitled to perform work or hold himself or herself out to perform work as a licensed master plumber until such plate and/or seal have been obtained. Further, no holder of a certificate of competence shall enter into any contractual agreement to install or alter any plumbing, gas piping, or any piping system, other than an employment agreement with a master plumber business or a city agency.

**§28-408.4.4 Effect of failure to obtain plate and/or seal.** If a holder of a certificate of competence has held the certificate for five years without a plate and/or seal, then the commissioner may require said person to submit an affidavit and supporting documentation satisfactory to the department stating that over the five-year period the individual has been engaged in planning or the design, and installation, of plumbing systems in the United States under the direct and continuing supervision of a licensed master plumber. If the holder's qualifications are not satisfactory to the commissioner, the commissioner may require such person to submit to reexamination or to provide evidence of retained proficiency. In addition, additional fees will be due as set forth in this chapter.

**§28-408.4.5 Requirement for obtaining a license, plate and /or seal.** A holder of a certificate of competence or an applicant who

has satisfied all requirements for a master plumber license shall obtain:

1. A license, plate and/or seal issued upon establishing a master plumbing business conforming to the requirements of this article and rules promulgated by the department; or
2. A license and seal issued upon demonstrating employment with a city agency. The license shall clearly state: "The bearer of this master plumber license is a government employee and as such is not authorized to engage in plumbing contract work outside of his/her government employment and within such government employment shall only engage in maintenance, replacement and repair plumbing work on existing buildings." No plate shall be issued to a licensed master plumber employed by a city agency.

**§28-408.4.6 Issuance.** A certificate of competence or a license, plate, and/or seal as a master plumber shall be issued only to an individual.

**§28-408.4.7 Duplication prohibited.** Not more than one license, plate and/or seal shall be issued to an individual and no individual shall make or cause to be made a duplicate of such license, plate or seal.

**§28-408.5 Surrender of license, plate or seal.** Upon the death or the retirement of a licensed master plumber, or upon the surrender, revocation or suspension of his or her license, his or her license, plate and/or seal shall immediately be surrendered to the commissioner. Nothing contained herein shall be construed to prevent the legal representative of a deceased licensee, with the consent of the commissioner, from retaining such plate and seal for the purpose of completing all unfinished work of the deceased licensee for which plans have been approved and a permit issued, provided such work is performed by or under the direct and continuing supervision of a licensed master plumber and is completed within one year from the date of the death of the original licensee.

**§28-408.6 Master plumber business.** No individual, corporation, partnership or other business association shall conduct a plumbing contracting business in the city of New York, or employ the name "plumber" or "plumbing" in its business name unless such business is a master plumber business as follows:

1. No less than 51 percent of the control and voting capital stock of such plumbing contracting business is owned by one or more individuals who are licensed master plumbers who cannot be terminated from the public contracting business by any person or entity, except as otherwise provided;
2. All plumbing or gas piping work performed by such entity is performed by or under the direct and continuing supervision of such licensed master plumber;
3. The person in charge of such work is such licensed master plumber; and
4. The persons actually performing such work are in the direct employ of such master plumber business as authorized by the code.

**Exception:** A company, corporation, partnership or other business association or its predecessor that was engaged in plumbing work prior to January 25, 1990 may continue to do so in any one or more of such business forms without complying with the foregoing, if (i) application was made to the department prior to July 25, 1990, and (ii) necessary evidence was furnished on or prior to January 25, 1991, that such company, corporation, partnership or other business association or its predecessor had employed an average of ten or more journeymen plumbers doing plumbing work for at least five days a week for a period of 10 years or more out of the twenty years preceding July 25, 1990, provided, that such plumbing business continues to have all plumbing work conducted under the management and direct and continuing supervision of a licensed master plumber in the direct employ of such plumbing business and that such licensed master plumber is not otherwise interested in, associated with or employed by any other plumbing business operating in this city except as a joint venture in which such master plumber's employer is one of the joint venturers.

**§28-408.6.1 Use.** Nothing herein contained shall be construed to prohibit the use of a master plumber license by the holder thereof for or on behalf of a partnership, corporation or other business association provided that such partnership, corporation or other business is a master plumber business.

**§28-408.6.2 Identification.** All business vehicles, advertising, websites and stationery used in connection with a master plumber business shall display prominently the full name of the licensee, the words "N.Y.C. licensed plumber," the licensee's number and the licensee's business address. If the business is conducted under a trade name, or by a partnership or corporation, the trade name, partnership or corporate name shall be placed immediately above the full name or names of the licensed master plumber or licensed master plumbers to whom the plates were issued.

**§28-408.6.3 Withdrawal of license.** If a licensed master plumber withdraws from a master plumbing business operating pursuant to such individual's license, the right of the business to perform plumbing work shall lapse if the provisions of this section 28-408.6 are no longer satisfied. If a licensed master plumber's license is revoked or suspended, such licensee will be deemed withdrawn from such business.

**§28-408.6.4 Ownership limitations.** An individual who is a licensed master plumber whose interest or ownership in a master plumber business constitutes any portion of the 51 percent interest or control required by this section 28-408.6 shall be allowed to possess an interest or ownership in only one other master plumber business, where such interest or ownership would constitute any

portion of the 51 percent interest or control required by this section 28-408.6. Both master plumber businesses in which the licensed master plumber has an interest shall be located at the same place of business. For the purposes of this section 28-408.6, where two or more individuals who are licensed master plumbers possess an interest or ownership in any master plumber business which together represents more than 51 percent of the interest or control of such entity, all of such licensees shall be deemed to possess a portion of the 51 percent interest or control required by this section 28-408.6.

**§28-408.6.5 Joint ventures.** Nothing contained in this section 28-408.6 shall be construed to prevent a master plumber business from entering into a joint venture of limited duration for a particular project with another master plumber business. The terms of a joint venture must be in writing, and documentation of the joint venture must be submitted to the department for approval prior to the initiation of work under such venture.

**§28-408.6.6 Supervision.** The master plumber shall conduct his or her business to provide direct and continuing supervision in accordance with the provisions of this code.

**Exception:** The provisions of this section 28-408.6.6 shall not apply to minor alterations or ordinary repairs, as defined in this code, or to the installation or alteration of gas service piping and gas meter piping, including meters, valves, regulators or related equipment, when such work is to be performed, serviced and maintained by utility corporations subject to the jurisdiction of the New York state public service commission.

#### **ARTICLE 409 JOURNEYMAN PLUMBER REGISTRATION**

**§28-409.1 Journeyman plumber registration; additional qualifications.** Upon satisfactory completion of a New York State-recognized training program or affirmation of an applicant's qualifications by an employer licensed master plumber or, in the case of a city agency, a supervising licensed master plumber and upon written stipulation of same by the applicant, the commissioner shall register an applicant as journeyman plumber. Such qualifications shall reflect a progressive understanding, proficiency and competence in the plumbing trade, including:

1. A working familiarity with the plumbing code and technical standards and the ability to apply the code requirements correctly;
2. The application of basic plumbing theory and the utilization of trade skills on the job site;
3. A working knowledge of the tools of the trade and the ability to utilize them properly; and
4. An ability to draft simple diagrams and interpret from drawings for the purpose of the plumbing work in which the applicant is engaged.

**§28-409.2 Experience.** The applicant for journeyman plumber registration shall have a minimum of five years of full-time experience in the performance of plumbing work under the direct and continuing supervision of a licensed master plumber or equivalent, where at least one year of such experience shall have been in New York city.

**§28-409.3 Registration need not be renewed.** The registration for journeyman plumber shall have no expiration and shall not require renewal or re-issuance.

**§28-409.4 Registration card.** The registration card shall clearly state: "This registration is NOT A LICENSE, and the holder is NOT AUTHORIZED TO PERFORM PLUMBING WORK in New York city except under the direct and continuing supervision of a licensed master plumber."

#### **ARTICLE 410 MASTER FIRE SUPPRESSION PIPING CONTRACTOR LICENSE**

**§28-410.1 Master fire suppression piping contractor license required.** It shall be unlawful for any person:

1. To perform fire suppression piping work unless such person is a licensed master fire suppression piping contractor or working under the direct and continuing supervision of a licensed master fire suppression piping contractor except that a city employee who holds a license may only perform replacement, maintenance and repair fire suppression piping work on existing buildings in the course of his or her employment.
2. To use the title licensed master fire suppression piping contractor, master fire suppression piping contractor or any other title in such manner as to convey the impression that such person is a licensed master fire suppression piping contractor unless such person is licensed as such in accordance with the provisions of this article.

**§28-410.2 Seal.** All documents that are required to be filed with any department or agency of the city of New York shall bear the stamp of the seal as well as the signature of the licensee. The licensed master fire suppression piping contractor performing the work and services shall personally sign and seal all applications and other documents required to be filed pursuant to the code.

**§28-410.3 Classification.** There shall be three classes of licenses for master fire suppression piping contractor:

1. **Class A.** The holder of a class A master fire suppression piping contractor license is authorized to perform any work in

connection with any and all fire suppression piping systems as set forth in paragraphs 1 and 2 of the definition of fire suppression piping system in section 28-401.3.

2. **Class B.** The holder of a class B master fire suppression piping contractor license is authorized to perform any work in connection with any and all fire suppression piping systems as set forth in paragraph 1 of the definition of fire suppression piping system in section 28-401.3.
3. **Class C.** The holder of a class C master fire suppression piping contractor license is authorized to perform any work in connection with any and all fire suppression piping systems as set forth in paragraph 2 of the definition of fire suppression piping system in section 28-401.3.

**§28-410.4 Additional qualifications.** Applicants for a master fire suppression piping contractor license shall have the following additional qualifications:

**§28-410.4.1 Experience.** All applicants for a master fire suppression piping contractor license shall submit satisfactory proof establishing that the applicant:

1. Has at least seven years total experience within the 10 years prior to application in the planning or design, and installation, of fire suppression piping systems under the direct and continuing supervision of a licensed master fire suppression piping contractor in the United States with the class of license for which application is made, with at least two years of such experience as a registered journeyman fire suppression piping installer in accordance with the provisions of article 411, except that during the three years immediately following July 1, 2008, there shall be no requirement for such registered journeyman fire suppression piping installer experience;
2. Has received a bachelor's degree in mechanical engineering, fire protection engineering or appropriate engineering technology from an accredited college or university and has at least five years total experience within the seven years prior to application in the planning or design, and installation, of fire suppression piping systems under the direct and continuing supervision of a licensed master fire suppression piping contractor in the United States for the class of license for which application is made, at least two of which were in New York city;
3. Is an architect or engineer with at least three years of experience within the five years prior to application in the planning or design, and installation, of fire suppression piping systems in the United States for the class of license for which application is made, where at least one year of such experience was in New York city;
4. Has at least seven years total experience within the 10 years prior to application, with at least two years of such experience working in the planning or design, and installation, of fire suppression piping systems under the direct and continuing supervision of a licensed master fire suppression piping contractor in the United States with the class of license for which application is made. The balance of such required experience may be obtained by performing maintenance, replacement and repair of fire suppression piping work on existing buildings while in the employ of a city agency under the direct and continuing supervision of a licensed master fire suppression piping contractor supervisor employed by the city agency with the class of license for which application is made. Three years after the effective date of this article the two years of experience in the planning or design, and installation, of fire suppression piping systems set forth above may only be satisfied by working as a registered journeyman fire suppression piping installer; or
5. Has experience as an employee of a government agency, private inspection agency or other entity, acceptable to the commissioner, whose duties primarily involve the inspection of plumbing work for compliance with this the New York city plumbing code and/or other laws relating to the installation, alteration or repair of fire suppression piping systems which shall be credited for fifty percent (50%) of the number of years that he or she has been satisfactorily employed in such duties within the ten (10) year period prior to application, which, however, in no event, shall exceed two and one-half (2½) years credit of satisfactory experience. The balance of the required seven years must have been obtained by working in the planning or design, and installation, of fire suppression piping systems under the direct and continuing supervision of a licensed fire suppression piping contractor in the United States except that the requirement of paragraph 1 of this section 28-410.4.1 that an applicant's working experience must have been within the ten (10) year period prior to application shall not apply to such balance of the work experience required pursuant to this paragraph.

**§28-410.4.2 Armed services.** Applicants who were engaged in fire suppression piping work prior to entering the armed services of the United States shall be permitted to credit their time in the service as experience in the fire suppression piping business, as above provided; but such service credit shall not exceed one-third of the time required for experience.

**§28-410.5 Certificate of competence and license, plate and/or seal.** The commissioner shall issue a certificate of competence, license, plate and/or seal in accordance with the following:

**§28-410.5.1 Certificate of competence.** A certificate of competence shall be issued by the commissioner to an applicant who satisfactorily complies with the experience and examination requirements of this article for a license, upon payment of the fee. Such certificate shall contain the full name of the individual and a certificate number, and shall be signed by the commissioner.

**§28-410.5.2 Effect of issuance.** The issuance of a certificate of competence shall constitute evidence that the person named therein is qualified upon payment of applicable fees to obtain a plate and seal while the certificate is valid except that a city employee while in the employ of the city shall only be entitled to obtain a seal.

**§28-410.5.3 Plate and/or seal required.** The holder of a certificate of competence shall not be entitled to perform work or hold himself or herself out to perform work as a licensed master fire suppression piping contractor until such plate and/or seal have been obtained. Further, no holder of a certificate of competence shall enter into any contractual agreement to install or alter any fire suppression piping system other than an employment agreement with a master fire suppression piping business or a city agency.

**§28-410.5.4 Failure to obtain plate and/or seal.** If a holder of a certificate of competence has held the certificate for five years without a plate and/or seal, then the commissioner may require said person to submit an affidavit and supporting documentation satisfactory to the department stating that over the five-year period the individual has been engaged in the planning or design, and installation, of fire suppression piping systems in the United States under the direct and continuing supervision of a licensed master fire suppression piping contractor. If the holder's qualifications are not satisfactory to the commissioner, the commissioner may require such person to submit to reexamination or to provide evidence of retained proficiency. In addition, additional fees will be due as set forth in this chapter.

**§28-410.5.5 License plate and/or seal.** A holder of a certificate of competence or an applicant who has satisfied all requirements for a master fire suppression piping contractor license shall obtain:

1. A license, plate and seal upon establishing a fire suppression piping contracting business conforming to the requirements of this article and any rules promulgated by the department; or
2. A license and seal upon demonstrating employment with a city agency. The license shall clearly state: "The bearer of this master fire suppression piping contractor license is a government employee and as such is not authorized to engage in fire suppression piping contract work outside of his/her government employment and within such government employment shall only engage in maintenance, replacement and repair fire suppression piping work on existing buildings." No plate shall be issued to a licensed master fire suppression piping contractor employed by a city agency.

**§28-410.5.6 Issuance.** A certificate of competence or a license, plate and/or seal as a master fire suppression piping contractor shall be issued only to an individual.

**§28-410.5.7 Duplication prohibited.** Not more than one license, plate and/or seal shall be issued to an individual, and no individual shall make or cause to be made a duplicate of such license, plate or seal.

**§28-410.6 Waiver of examinations.** Any license issued without examination pursuant to an application filed prior to July 25, 1990 pursuant to the provisions of law in effect prior to July 1, 2008 that has not lapsed as of July 1, 2008, shall be renewable pursuant to the provisions of this code.

**§28-410.7 Surrender of license, plate and/or seal.** Upon the death or the retirement of a licensed master fire suppression piping contractor, or upon the surrender, revocation or suspension of his or her license, his or her license, plate and seal shall immediately be surrendered to the commissioner. Nothing contained herein shall be construed to prevent the legal representative of a deceased licensee, with the consent of the commissioner, from retaining such plate and seal for the purpose of completing all unfinished work of such deceased licensee for which plans have been approved and a permit issued, provided such work is performed by or under the direct and continuing supervision of a licensed master fire suppression piping contractor and is completed within one year from the date of the death of the original licensee.

**§28-410.8 Master fire suppression piping contractor business required.** No individual, corporation, partnership or other business association shall conduct a fire suppression piping contracting business in the city of New York, or employ the name "fire suppression piping" in its business name, unless the business is a master fire suppression business as follows:

1. No less than 51 percent of the control and voting capital stock of such fire suppression piping contracting business is owned by one or more individuals who are licensed master fire suppression piping contractors who cannot be terminated from the fire suppression piping contracting business by any person or entity, except as otherwise provided; and
2. All fire suppression piping work performed by such entity is performed by or under the direct and continuing supervision of such licensed master fire suppression piping contractor;
3. The person in charge of such work is such licensed master fire suppression piping contractor; and
4. The persons actually performing such work are in the direct employ of such master fire suppression piping contractor business as authorized by the code.

**Exception:** A company, corporation, partnership or other business association or its predecessor that was engaged in fire suppression piping contractor work prior to January 25, 1990 may continue to do so in any one or more of such business forms without complying with the foregoing, if (i) application was made to the department prior to July 25, 1990, and (ii) necessary evidence was furnished on or prior to January 25, 1991, that such company, corporation, partnership or other business association or its predecessor had employed an average of 10 or more journeymen doing fire suppression piping contractor work for at least five days a week for a period of ten years or more out of the 20 years preceding July 25, 1990, provided, that such business continues to have all fire suppression piping contractor work conducted under the management and direct and continuing supervision of a licensed master fire suppression contractor in the direct employ of such business and that such licensed master fire suppression contractor is not otherwise interested in, associated with or employed by any other licensed master fire suppression contracting business operating in this city except as a joint venture in which such

licensed master fire suppression contractor's employer is one of the joint venturers.

**§28-410.8.1 Use.** Nothing herein contained shall be construed to prohibit the use of a master fire suppression piping contractor license by the holder thereof for or on behalf of a partnership, corporation or other business association provided that such partnership, corporation or other business is a master fire suppression piping contractor business.

**§28-410.8.2 Identification.** All business vehicles, advertising, websites and stationery used in connection with a master fire suppression piping contractor business shall display prominently the full name of the licensee, the words "N.Y.C. licensed fire suppression piping contractor – class A, B or C," the licensee's number and the licensee's business address. If the business is conducted under a trade name, or by a partnership or corporation, the trade name, partnership or corporate name shall be placed immediately above the full name or names of the licensed master fire suppression piping contractor or licensed master fire suppression piping contractors to whom the plates were issued.

**§28-410.8.3 Withdrawal of licensee.** If a licensed master fire suppression piping contractor withdraws from a master fire suppression piping contractor business operating pursuant to such individual's license, the right of the business to perform fire suppression piping work shall lapse if the provisions of this article are no longer satisfied. If a licensed master fire suppression piping contractor's license is revoked or suspended, such licensee will be deemed withdrawn from such business.

**§28-410.8.4 Ownership limitations.** An individual who is a licensed master fire suppression piping contractor whose interest or ownership in a master fire suppression piping contractor business constitutes any portion of the 51 percent interest or control required by this section 28-410.8 shall be allowed to possess an interest or ownership in only one other fire suppression piping contractor business where such interest or ownership would constitute any portion of the 51 percent interest or control required by this section 28-410.8. Both fire suppression piping contractor businesses in which the licensed master fire suppression piping contractor has an interest shall be located at the same place of business. For the purposes of this section 28-410.8, where two or more individuals who are licensed master fire suppression piping contractors possess an interest or ownership in any master fire suppression piping contractor business which together represents more than 51 percent of the interest or control of such entity, all of such licensees shall be deemed to possess a portion of the 51 percent interest or control required by this section 28-410.8.

**§28-410.8.5 Joint ventures.** Nothing contained in this section 28-410.8 shall be construed to prevent a master fire suppression piping contractor business from entering into a joint venture of limited duration for a particular project with another master fire suppression piping contractor business. The terms of a joint venture must be in writing, and documentation of the joint venture must be submitted to the department for approval prior to the initiation of work under such venture.

**§28-410.8.6 Supervision.** The master fire suppression piping contractor shall conduct his or her business to provide direct and continuing supervision in accordance with the provisions of this article.

**Exception:** The provisions of this section 28-410.8.6 shall not apply to minor alterations or ordinary repairs, as defined in this code, and/or to maintenance of a fire suppression piping system.

## ARTICLE 411 JOURNEYMAN FIRE SUPPRESSION PIPING INSTALLER REGISTRATION

**§28-411.1 Journeyman fire suppression piping installer registration; additional qualifications.** Upon satisfactory completion of a New York state-recognized training program or affirmation of an applicant's qualifications by an employer licensed master fire suppression piping contractor or, in the case of a city agency, a supervising licensed master fire suppression piping contractor and upon written stipulation of same by the applicant, the commissioner shall register an applicant as journeyman fire suppression piping installer. Such qualifications shall reflect a progressive understanding, proficiency and competence in the fire suppression piping trade, including:

1. A working familiarity with the code and technical standards with regard to fire suppression piping, and the ability to apply the code requirements correctly;
2. The application of basic fire suppression theory and the utilization of trade skills on the job site;
3. A working knowledge of the tools of the trade and the ability to utilize them properly; and
4. An ability to draft simple diagrams and interpret from drawings for the purpose of the fire suppression piping work in which the applicant is engaged.

**§28-411.2 Experience.** The applicant for journeyman fire suppression piping installer registration shall have a minimum of five years of full-time experience in the performance of fire suppression piping work under the direct and continuing supervision of a licensed master fire suppression piping contractor or equivalent, where at least one year of such experience shall have been in New York city.

**§28-411.3 No required expiration, renewal or reissuance.** The registration for journeyman fire suppression piping installer shall have no expiration and shall not require renewal or reissuance.

**§28-411.4 Required statement.** The registration shall clearly state: "This registration is NOT A LICENSE, and the holder is NOT AUTHORIZED TO PERFORM FIRE SUPPRESSION PIPING WORK in New York city except under the direct and continuing supervision of a Licensed Master Fire Suppression Piping Contractor."

**ARTICLE 412  
OIL-BURNING EQUIPMENT INSTALLER LICENSE**

**§28-412.1 Oil-burning equipment installer license required.** It shall be unlawful to install oil-burning equipment in the city unless such work is performed by or under the direct and continuing supervision of a person licensed as an oil-burning equipment installer under the provisions of this article.

**§28-412.2 Classifications.** Oil-burning equipment installer licenses shall be classified as follows:

1. **Class A oil-burning equipment installer license.** Licenses the holder thereof to install any type of oil-burning equipment, as an independent contractor with full responsibility for the manner in which the work is done, and for the material and equipment used, and for the control and direct and continuing supervision of the persons employed on the work. Such equipment shall include but not be limited to burners, boilers and generators.
2. **Class B oil-burning equipment installer license.** Licenses the holder thereof to install oil-burning equipment for the use of domestic fuel oils from number one fuel oil to and including number four fuel oil, as an independent contractor with full responsibility for the manner in which the work is done, for the materials and equipment used, and for the control and direct and continuing supervision of the persons employed on the work.

**§28-412.3 Qualifications.** Applicants for an oil-burning equipment installer license shall have the qualifications set forth in sections 28-412.3.1 through 28-412.3.2.

**§28-412.3.1 Experience for Class A license.** All applicants for a class A oil-burning equipment installer license shall submit satisfactory proof establishing that the applicant has had at least four years practical experience within the seven years prior to application in the installation of oil-burning equipment under the direct and continuing supervision of a Class A-licensed oil-burning equipment installer in the city, including at least one year experience in the installation of oil-burning equipment for the use of number five and number six fuel oils.

**§28-412.3.2 Experience for Class B license.** All applicants for a class B oil-burning equipment installer license shall submit satisfactory proof establishing that the applicant has had at least three years practical experience within the five years prior to application in the installation of oil-burning equipment under the direct and continuing supervision of a licensed oil-burning equipment installer in the city.

**§28-412.4 Fitness to perform work.** As a condition of license renewal and reinstatement, a licensed oil-burning equipment installer shall provide evidence satisfactory to the department that such licensee is fit to perform the work.

**§28-412.5 Oil-burning equipment installer place of business.** Every licensed oil-burning equipment installer shall have a place of business within the city. A licensed oil-burning equipment installer shall be a sole proprietor, a partner in the partnership or an officer of the corporation.

**ARTICLE 413  
HIGH-PRESSURE BOILER  
OPERATING ENGINEER LICENSE**

**§28-413.1 High-pressure boiler operating engineer license required.** It shall be unlawful to operate any high-pressure boiler for any purpose whatsoever, in the city of New York or in connection with any vessel on the waters in and around the city not subject to the jurisdiction of the United States, unless such boiler is operated by or under the direct and continuing supervision and in the presence of a person having a high-pressure boiler operating engineer license under the provisions of this article.

**Exceptions:** A licensed high-pressure boiler operating engineer is not required to operate a high-pressure boiler that meets all of the following conditions:

1. The boiler is a stand-alone boiler;
2. If the boiler is a steam boiler, the boiler has less than 100 square feet (9.3 m<sup>2</sup>) of heating surface;
3. If the boiler is a steam boiler, it is capable of generating less than 1750 pounds (794 kg) per hour of steam; or if the boiler is a hot water boiler, it is capable of generating less than 2 million btu/h of hot water;
4. The boiler has a safety relief valve setting of 200 psig (1379 kPa) or less;
5. The boiler room enclosure is in compliance with section 508 of the New York city building code; and
6. There is a carbon monoxide detector in the boiler room.

**§28-413.2 Qualifications.** Applicants for a high-pressure boiler operating engineer license shall present satisfactory proof that:

1. Applicant was employed as a fireman, oiler, general assistant, journeyman, boiler-maker or machinist under the direct and continuing supervision of a licensed high-pressure boiler operating engineer in the city for a period of not less than five years within the seven year period preceding the date of the application; however, in lieu of the experience requirement contained in this paragraph, an applicant for a high-pressure boiler operating engineer license who is employed in a fossil fuel production

plant located in the Rockaway Peninsula area of Queens county may submit satisfactory proof establishing that the applicant has obtained at least five years experience within the seven years preceding the date of the application which shall include at least two years of experience obtained during employment under the direct and continuing supervision of a licensed high-pressure boiler operating engineer in a steam generating plant located outside of the city of New York but within the state of New York that is owned and operated by a licensed public utility company, and shall also include a separate period of at least three years of experience obtained during employment as a fireman, oiler, general assistant, journeyman, boiler-maker or any comparable position as approved by the commissioner, in such steam generating plant;

2. Applicant received a degree in mechanical engineering from an accredited school or college and had one year experience in the operation and maintenance of high-pressure boilers under the direct and continuing supervision of a licensed high-pressure boiler operating engineer in the city within the two year period preceding the date of the application;
3. Applicant has held, for a minimum of four years, a certificate as an engineer issued by a board of examining engineers duly established and qualified pursuant to the laws of the United States or any state or territory thereof, or a certificate as a marine engineer issued by the United States Coast Guard, and a minimum of one year experience in the city in the operation and maintenance of stationary high-pressure boiler plants under the direct and continuing supervision of a licensed high-pressure boiler operating engineer within the seven years preceding the date of the application, provided that the applicant shall have filed with such application a signed statement that the applicant is the person named in said certificate together with the supporting signed statements by three licensed high-pressure boiler operating engineers employed in the city of New York at the time of making of such signed statements;
4. Applicant exercised direct and continuing supervision, care, operation and maintenance over a steam generating plant of a governmental building, having boilers of 150 or more horsepower, for a minimum of five years and had a minimum of one year of experience on high-pressure boilers under the direct and continuing supervision of a licensed high-pressure boiler operating engineer in the city within the seven year period preceding the date of the application;
5. Applicant successfully completed a New York state approved apprenticeship training program of at least two years and had at least three years experience within the seven years preceding the date of the application in the operation and maintenance of high-pressure boilers in the city under the direct and continuing supervision of a licensed high-pressure boiler operating engineer;
6. Applicant has held a Commission from the National Board of Boiler and Pressure Vessel Inspectors for a period of seven years, and has a minimum of five years of high pressure boiler operation, maintenance, and/or inspection experience under such commission within the seven year period preceding the application;
7. Applicant has held a Qualifications of High Capacity Fossil Fuel Operator (QFO) operator certification from ASME, and has a minimum of five years of high pressure boiler operation, maintenance, and/or inspection experience under such QFO certification within the seven year period preceding the application; or
8. Applicant has held a high pressure certification/high pressure license for a period of five years from other jurisdictions acceptable to the commissioner provided such jurisdiction follows the ASME Boiler and Pressure Vessel Code, and was employed under such certification and/or license for a period of not less than five of the last seven years in the operation, maintenance and/or inspection of high pressure boilers.

**§28-413.3 Fitness to perform work.** As a condition of license renewal and reinstatement, a licensed high-pressure boiler operating engineer shall provide evidence satisfactory to the department that such licensee is fit to perform the work.

**§28-413.4 Individuals holding portable high-pressure boiler operating engineer license on the effective date of this section.** Notwithstanding section 28-413.2, upon application, individuals who hold a portable high-pressure boiler operating engineer license on the effective date of this section may be issued a high-pressure boiler operating engineer license without examination. Such application shall be deemed to be an application for renewal of a license pursuant to this chapter.

#### **ARTICLE 414 RESERVED**

#### **ARTICLE 415 SIGN HANGER LICENSE**

**§28-415.1 Sign hanger license required.** It shall be unlawful to hoist or lower or to hang or attach any sign upon or on the outside of any building or structure in the city unless such work is performed by or under the direct and continuing supervision of a person licensed as a sign hanger under the provisions of this article.

**§28-415.2 Exemptions.** The provisions of this article shall not apply to the following:

1. Signs not exceeding 75 square feet (7 m<sup>2</sup>) in area, measured on one face only, nor exceeding 25 pounds (11 kg) in weight;
2. Signs supported directly on the ground; or
3. Directional signs; or

4. Temporary signs erected during the construction or alteration of a building and related to such work; or
5. The erection or placing of any signs by employees of the city, any city department or other city agency.

**§28-415.3 Classification.** Such licenses shall be classified as follows:

1. **Master sign hanger license.** Authorizes the holder thereof to hoist or lower or to hang or attach any sign, irrespective of weight, upon or on the outside of any building.
2. **Special sign hanger license.** Authorizes the holder thereof to hoist or lower or to hang or attach any sign not exceeding one hundred fifty square feet in area, measured on one face only, nor exceeding one thousand two hundred pounds in weight, upon or on the outside of any building.

**§28-415.4 Additional qualifications.** Applicants for a sign hanger license shall have the additional qualifications set forth in sections 28-415.4.1 through 28-415.4.2.

**§28-415.4.1 Master sign hanger qualifications.** All applicants for a master sign hanger license shall submit satisfactory proof establishing that the applicant has at least five years practical experience in sign hanging within the seven years preceding the date of the license application under the direct and continuing supervision of a licensed master sign hanger; and the applicant shall also have a knowledge of and ability to read plans and specifications relating to sign construction and erection, including supporting framework and other supports, and a knowledge of the problems and practices of sign construction and hanging and be familiar with the equipment and tools used in sign hanging.

**§28-415.4.2 Special sign hanger qualifications.** All applicants for a special sign hanger license shall submit satisfactory proof establishing that the applicant has at least three years practical experience in sign hanging within the five years preceding the date of the license application under the direct and continuing supervision of a licensed sign hanger; and the applicant shall also have a knowledge and ability to read plans and specifications relating to sign construction and erection, including supporting framework and other supports, and a knowledge of the problems and practices of sign construction and hanging and be familiar with the equipment and tools used in sign hanging.

**§28-415.5 Additional requirements.** The additional requirements set forth in sections 28-415.5.1 through 28-415.5.2 shall apply to sign hangers:

**§28-415.5.1 Danger warning.** Every licensed sign hanger shall, while sign hanging operations are in progress at a job site, place conspicuously at such job site two plates or signs not less than 18 inches (457 mm) by 24 inches (610 mm) in size (i) displaying the word “danger” in letters not less than 6 inches (152 mm) high, and (ii) disclosing the sign hanger’s name, business address, type of license and license number.

**§28-415.5.2 Sign hanger place of business.** Every licensed sign hanger shall have a place of business within the city and shall display prominently at such place of business a plate or sign marked with the words “sign hanger” and the license number immediately thereunder. A licensed sign hanger shall be a sole proprietor, a partner in the partnership or an officer of the corporation and shall be allowed to associate his or her license with only one other sign hanger business. Such businesses shall be located at the same place of business.

**§28-415.6 Fitness to perform work.** As a condition of license renewal or reinstatement, a licensed sign hanger shall provide evidence satisfactory to the department that such licensee is fit to perform the work.

## **ARTICLE 416 FILING REPRESENTATIVE REGISTRATION**

**§28-416.1 Filing representative registration required.** No person shall use the term “registered filing representative” or “filing representative” or any similar representation in such manner as to convey the impression that such person is a registered filing representative in accordance with the provisions of this article; nor shall any person present, submit, furnish or seek approval of applications or construction documents, or remove any documents from the possession of the department, without first having registered with the department such person’s name, address and company affiliation on a form to be furnished by the department.

**§28-416.2 Exemptions.** The following persons are exempt from the provisions of this article. Any person from whom the department may refuse to accept an application or other document pursuant to section 28-211.1 shall not be afforded this exemption.

1. The owners of the premises for which the building applications are filed including, in the case of partnerships or corporations, the general partners or the principal officers of the corporation, where the principal officers of a corporation shall include the president, vice presidents, secretary and treasurer;
2. The lessees of such premises authorized by the owner to file building applications;
3. Condominium unit owners authorized by the condominium board of managers to file building applications;
4. Cooperative shareholders authorized by the cooperative board of directors to file building applications;
5. Architects;
6. Engineers;

7. Attorneys admitted to practice in New York state;
8. Master plumbers licensed pursuant to this chapter;
9. Master fire suppression piping contractors licensed pursuant to this chapter; and
10. Master electricians licensed pursuant to subchapter one of chapter 3 of title 27 of the administrative code.

**§28-416.3 Rules.** The commissioner shall promulgate rules for the proper and efficient administration and enforcement of this article. Unless required by rule, a registered filing representative shall not be required to take an examination or to complete continuing education courses as a condition for renewal of the registration.

## **ARTICLE 417 BOARDS**

**§28-417.1 Plumbing and fire suppression piping contractor license board.** The commissioner shall appoint annually and may remove in his or her discretion each member of a plumbing and fire suppression piping contractor license board that shall have as its purpose the following:

1. To advise the commissioner regarding the character and fitness of applicants for certificates of competence and licenses who have passed the required examination.
2. To advise the commissioner regarding allegations of illegal practices on the part of licensed master plumbers, licensed master fire suppression piping contractors, master plumber businesses or master fire suppression piping businesses.
3. To advise the commissioner regarding plumbing and fire suppression piping practices, code applications, regulations and legislation.
4. To perform such other responsibilities as may be requested by the commissioner and as set forth in rules promulgated by the department.

**§28-417.1.1 Removal.** The commissioner may remove any member of the license board and shall fill any vacancy therein.

**§28-417.1.2 Membership.** Membership of the board shall consist of:

1. Two officers or employees of the department;
2. Five licensed master plumbers, three of whom shall be selected from nominees of the New York city contracting plumbing association whose members perform the largest dollar value of work within the city and one of whom shall be the holder of a class A or class B master fire suppression piping contractor license. The two remaining licensed master plumber board member positions shall be from the next largest plumbing association in the city of New York.
3. Two licensed master fire suppression piping contractors, both of whom shall hold a class A license and shall be selected from nominees of the New York city sprinkler/fire suppression piping contractors association whose members perform the largest dollar value of work within the city;
4. A registered journeyman plumber from the organization representing the largest number of registered journeyman plumbers;
5. A registered journeyman fire suppression piping installer from the organization representing the largest number of registered journeyman fire suppression piping installers;
6. An engineer having at least five years experience in the planning or design, and installation, of plumbing systems;
7. An architect;
8. An engineer who is a full member of the society of fire protection engineers;
9. Two officers or employees of the fire department representing the fire commissioner; and
10. A real estate owner or manager or representative thereof.

**§28-417.1.3 Organization of the board.** A member of the board who is an officer or employee of the department representing the commissioner shall serve as chairperson and all members shall serve without compensation. Nine members including the chairperson, who shall be entitled to vote, shall constitute a quorum of the board for the transaction of business. In the absence of a member or in the event of a vacancy, an alternate member of the board, may vote in the place and stead of the member for whom he or she is the alternate or on account of whom the vacancy exists. Alternate members shall be appointed and removed at the commissioner's discretion. All actions shall be conducted by majority vote except as otherwise provided, and the board shall keep minutes of its proceedings and records of its investigations. Except as otherwise determined by the chairperson, the board shall meet at least once a month.

**§28-417.1.4 Advisory and support personnel.** The board may request the commissioner to appoint duly authorized representatives to conduct investigations and other activities incidental to the functions of the license board. Such appointees shall be non-voting members of the committee to which they are appointed, and may include personnel who are not department employees who shall serve without compensation. In addition the commissioner may designate such employees of the department as the commissioner

deems necessary to the service and support of the license board.

## **ARTICLE 418 GENERAL CONTRACTOR REGISTRATION**

**§28-418.1 Requirement of registration.** On and after November 1, 2008, it shall be unlawful for a person to conduct business as a general contractor unless such person holds a general contractor registration in accordance with the provisions of this article.

**§28-418.1.1 Expiration of registration.** A general contractor registration shall expire on the third anniversary of such registration or such other date as determined by the commissioner by rule so as to distribute the expiration dates of the registrations evenly over the course of a year.

**§28-418.2 Unlawful use of general contractor title.** On and after November 1, 2008, it shall be unlawful to use or cause to be used the title registered general contractor or any other title in a manner as to convey the impression that an individual, corporation, partnership or other business entity, or any person it employs, is a registered general contractor, unless such individual, corporation, partnership or other business entity is registered in accordance with the provisions of this article.

**§28-418.3 Application requirements.** An application for a general contractor registration or renewal shall be made in writing to the commissioner on a form provided by the department and shall be accompanied by the following:

1. If the applicant is an individual: the applicant's full name, residence address, business address and business telephone number;
2. If the applicant is a corporation:
  - 2.1. The corporate name, address and telephone number of the applicant's principal office or place of business;
  - 2.2. The date and state of incorporation;
  - 2.3. The name, residence address and residence telephone number of all corporate officers and registered agents and any person owning an interest of ten percent or more in the corporation;
  - 2.4. Proof that the corporation is in good standing under the laws of the state of New York;
3. If the applicant is a partnership:
  - 3.1. The name, address and telephone number of the applicant's principal office or place of business;
  - 3.2. The name, residence address and residence telephone number of all partners;
4. The registration fee;
5. A verified statement that the applicant is financially solvent;
6. The name and address of the principal location from which the applicant has engaged in the business of general contracting at any time within the last five years;
7. If the applicant is not a sole proprietor, proof that the applicant is authorized to do business in the state of New York;
8. Proof of insurance as required by section 28-401.9;
9. The name and address of the officer, principal or director of the applicant who is primarily responsible for the registrant's compliance with the requirements of this code or any rule adopted there under;
10. Any other information that the commissioner may require.

**§28-418.3.1 Financial solvency.** For the purposes of this article, financial solvency shall mean that the applicant's operating capital shall exceed twenty-five thousand dollars.

**§28-418.4 Warranties.** A warranty shall be provided to the buyer of a new one-, two- or three-family structure that accords with the provisions of article thirty-six-B of the New York state general business law, including the following:

1. One year from and after the warranty date the home will be free from defects due to a failure to have been constructed in a skillful manner;
2. Two years from and after the warranty date the plumbing, electrical, heating, cooling and ventilation systems of the home will be free from defects due to a failure by the builder to have installed such systems in a skillful manner; and
3. Six years from and after the warranty date the home will be free from material defects, including, but not limited to, any construction that is not in compliance with the building code or the zoning resolution of the city of New York.

**§28-418.4.1 Modification prohibited.** Except as otherwise provided in section seven hundred seventy-seven-b of such article thirty-six-B, no such warranty shall be modified or excluded in any way.

**§28-418.5 Duties and responsibilities.** The general contractor shall comply with sections 28-418.5.1 through 28-418.5.3.

**§28-418.5.1 Subcontractor information.** The general contractor shall be responsible for providing information to the department

about his or her subcontractors and the particular work they perform on jobs for which the department has issued permits to the general contractor. Such information shall be provided in a format and at the times specified in the rules of the department.

**§28-418.5.2 Technical reports.** The general contractor shall maintain at the work site such technical reports as specified in the rules of the department and shall make such reports available to department personnel on request.

**§28-418.5.3 Notice of pending disciplinary actions.** The general contractor shall notify all of its suppliers of any pending suspension or revocation actions against such general contractor and shall provide an affidavit to the department stating that this notification has been made.

## **ARTICLE 419 SEIZURE AND FORFEITURE**

**§28-419.1 General.** On and after November 1, 2008 vehicles and tools used in connection with unlicensed or unregistered activity at the work site of a new residential structure containing no more than three dwelling units shall be subject to seizure and forfeiture.

**§28-419.2 Definitions.** For purposes of this article, the following terms shall have the following meanings.

1. The term “owner” as applied to vehicles shall mean an owner as defined in section one hundred twenty-eight and in subdivision three of section three hundred eighty-eight of the vehicle and traffic law.
2. The term “security interest” as applied to vehicles shall mean a security interest as defined in subdivision k of section two thousand one hundred one of the vehicle and traffic law.
3. The term “unlicensed activity” shall mean the conduct of any activity at a work site for the construction of a residential structure containing no more than three dwelling units without a license for which a license is required under any law, rule or regulation enforced by the commissioner of buildings, and the term “unregistered activity” shall mean the conduct of any activity at a work site for the construction of a residential structure containing no more than three dwelling units without a registration for which a registration is required under any law or regulation enforced by the commissioner of buildings.

**§28-419.3 Seizure procedure.** The following provisions shall govern seizure of vehicles and tools pursuant to this article.

**§28-419.3.1 Seizure.** Any police officer or authorized officer or authorized employee of the department may seize any vehicle and any tools contained therein that such police officer or authorized officer or authorized employee has reasonable cause to believe is being used in connection with unlicensed or unregistered activity, upon service on the owner or operator of the vehicle of a notice of violation for engaging in such activity. Any vehicle and tools seized pursuant to this section shall be delivered into the custody of the department or other appropriate agency.

**§28-419.3.2 Written demand.** The owner or operator of the vehicle and/or tools may make a written demand for a hearing for the return of the seized property. Notice of the right to a hearing shall be provided to the operator at the time of seizure of the vehicle and/or tools, and a copy of such notice shall be sent by mail to the registered and/or title owner of the vehicle, if other than the operator, and to the owner of the tools if other than the owner or operator of the vehicle and if reasonably ascertainable, within five business days of the seizure. The department shall schedule the hearing at the office of administrative trials and hearings (OATH) or its successor agency, as applicable, for a date within ten business days after receipt of the demand and shall notify the operator and the owner(s) of the opportunity to participate in the hearing and the date thereof.

**§28-419.3.3 Claimant.** A claimant seeking release of the vehicle and tools at the hearing may be either the person from whom the vehicle and tools were seized, if that person was in lawful possession of the vehicle and tools, or the owner if different from such person.

**§28-419.3.4 Determination.** The OATH judge shall issue a determination within five business days after the conclusion of the hearing.

**§28-419.3.5 Return pending hearing.** The department shall establish a procedure whereby an owner or operator who wishes to have the vehicle and/or tools returned pending the hearing shall post a bond in an amount determined by the department, but in no event less than an amount sufficient to cover any applicable removal and storage fees as well as fines and penalties.

**§28-419.3.6 Return without hearing.** The department shall establish a procedure whereby an owner or operator may request the return of the vehicle and/or tools without a hearing if such owner or operator:

1. Establishes that the vehicle and/or tools were seized in error, or
2. Immediately applies for licensure or registration pursuant to the applicable provisions of this code and pays an amount not to exceed removal and storage fees and any fines or penalties that could have been imposed under the provisions of this code.

Where the owner or operator establishes that the vehicle and/or tools were seized in error, the department shall expeditiously return such vehicle and/or tools.

**§28-419.4 Abandoned property.** Any vehicle and/or tools for which a written demand for return of the vehicle and/or tools or for a hearing pursuant to section 28-419.3.2 has not been made within thirty days of service of the notice of violation on the operator of the vehicle and/or tools or within thirty days of service of the notice of violation on the owner of the vehicle and/or tools if the owner is

not the operator of the vehicle and/or tools shall be deemed abandoned and shall be disposed of by the department pursuant to applicable law.

**§28-419.5 Combined hearings.** The department may choose to have the underlying violation adjudicated before the office of administrative trials and hearings in accordance with sections 28- 419.5.1 through 28- 419.5.3.

**§28-419.5.1 Combined hearing and determination.** Upon notice to the respondent, the department may choose to have the violation underlying the seizure returnable to and heard at OATH and may combine the hearing on the underlying violation with the hearing for the return of the seized property. At such combined hearing the OATH judge shall make a determination as to both and may impose any penalty that could be imposed in a proceeding before the environmental control board for the underlying violation. The OATH judge shall issue a determination within five business days after the conclusion of the hearing.

**§28-419.5.2 Release following finding of no violation.** If the OATH judge finds that the vehicle and/or tools were not used in connection with unlicensed or unregistered activity, the department shall promptly release such vehicle and/or tools.

**§28-419.5.3 Release following finding of violation.** If the OATH judge finds that the vehicle and/or tools were used in connection with unlicensed or unregistered activity, the department may release such vehicle and/or tools upon payment of all applicable fines and civil penalties and all reasonable costs of removal and storage, or may commence a forfeiture action within twenty business days after the date of the judge's determination.

**§28-419.6 Separate hearings.** In the event that the adjudication of the violation underlying the seizure is not held at OATH, and a determination is made that the vehicle and tools were not used in connection with unlicensed or unregistered activity, the department shall promptly release such vehicle and/or tools.

**§28-419.7 Forfeiture procedure.** The following provisions shall govern forfeiture of vehicles and tools pursuant to this article.

**§28-419.7.1 Commencement of forfeiture.** A forfeiture action pursuant to this article shall be commenced by the filing of a summons with a notice or a summons and complaint in accordance with the civil practice law and rules. Such summons with notice or a summons and complaint shall be served in accordance with the civil practice law and rules on the vehicle operator, the owner of the tools, if different from the vehicle operator, and owner of the vehicle, and on all owners of the subject vehicle listed in the records maintained by the department of motor vehicles, or for vehicles not registered in the state of New York, in the records maintained by the state of registration. Except as otherwise provided in this article, a vehicle and/or tools that are the subject of such action shall remain in the custody of the department or other appropriate agency pending the final determination of the forfeiture action.

**§28-419.7.2 Notice of forfeiture.** Notice of the institution of the forfeiture action shall be given by certified mail to all persons holding a security interest in such vehicle or tools, if known, if such security interest in the vehicle has been filed with the department of motor vehicles pursuant to the provisions of title ten of the vehicle and traffic law, at the address set forth in the records of such department, or, for vehicles not registered in the state of New York, all persons holding a security interest in such vehicle if such security interest has been filed with the state of registration and which persons are made known by such state to the department, at the address provided by such state of registration.

**§28-419.7.3 Security interest.** Any person with a security interest in such vehicle or tools who receives notice of the institution of the forfeiture action who claims an interest in such vehicle or tools subject to forfeiture may assert a claim in such action for satisfaction of such person's security interest in such vehicle or tools.

**§28-419.7.4 Forfeiture subject to security interest.** Forfeiture shall be made subject to the interest of a person who claims an interest in the vehicle or tools, where such person establishes that:

1. The use of the vehicle or tools for the conduct that was the basis for the seizure of the vehicle and tools occurred without the knowledge of such person, or if such person had knowledge of such use, that such person did not consent to such use by doing all that could reasonably have been done to prevent such use, and that such person did not knowingly obtain such interest in the vehicle or tools in order to avoid the forfeiture of such vehicle or tools, or
2. The conduct that was the basis for such seizure was committed by any person other than such person claiming an interest in the vehicle or tools, while such property was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

**§28-419.7.5 Disposition.** The department or agency having custody of the vehicle and tools, after judicial determination of forfeiture, shall, at its discretion, either (i) retain such vehicle and tools for the official use of the city; or (ii) by public notice of at least five days, sell such forfeited vehicle and tools at public sale. The net proceeds of any such sale shall be paid into the general fund of the city.

**§28-419.7.6 Amount of award.** In any forfeiture action commenced pursuant to this article, where the court awards a sum of money to one or more persons in satisfaction of such person's interest in the forfeited vehicle and tools, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited vehicle and tools after deduction of the lawful expenses incurred by the city, including reasonable costs of removal and storage of the vehicle and tools between the time of seizure and the date of sale.

**ARTICLE 420**  
**REQUIREMENT OF SAFETY REGISTRATION NUMBER**

**§28-420.1 Requirement of application for safety registration number.** On and after October 1, 2009, no safety registration recipient shall conduct business for the purposes that would qualify the person as a safety registration recipient unless such person has received the required safety registration number from the department.

**§28-420.2 Application requirements.** An application for a safety registration number shall be made in writing to the commissioner on a form provided by the department and shall be accompanied by the following:

1. If the applicant is an individual: the applicant's full name, residence address, business address, and business telephone number, and an email address for the receipt of notifications;
2. If the applicant is a corporation:
  - 2.1. The corporate name, address, telephone number and email address of the applicant's principal office or place of business for the receipt of notifications;
  - 2.2. The date and state of incorporation;
  - 2.3. Proof that the corporation is in good standing under the laws of the state of New York;
3. If the applicant is a partnership:
  - 3.1. The name, address, telephone number and email address of the applicant's principal office or place of business for the receipt of notifications;
  - 3.2. The name and telephone number of all partners;
4. The name, telephone number and e-mail address of all corporate officers and registered agents and any person owning or controlling an interest of ten percent or more in the applicant's business;
5. The name, address, and telephone number of any entity in which the applicant is an employee, participates in the management of, or in which the applicant has a controlling interest and which files for permits with the department.
6. The name and address of the principal location from which the applicant has engaged in the business that would qualify it as a safety registration recipient at any time within the last five years;
7. If the applicant is not a sole proprietor, proof that the applicant is authorized to do business in the state of New York;
8. Proof of insurance as required by Title 28 of this code and the rules of the department;
9. The name, address and e-mail address of the officer, principal or director of the applicant who is designated to receive official notices from the department;
10. The name, address and telephone number and e-mail address of the officer(s), principal(s) or director(s) of the applicant who should be contacted in the event of an emergency; and
11. The commissioner shall waive the requirements of items one through seven of section 28-420.2 for any applicant who has submitted a Vendex questionnaire to the Mayor's Office of Contract Services within the previous three years provided that the questionnaire contains the information required by this article and who provides a copy of the Vendex questionnaire to the department with such proof of submission as the department may require.

**§28-420.3 Duties and Responsibilities.** The recipient of a safety registration number shall comply with the following requirements:

1. Subcontractor information. The recipient of a safety registration number shall maintain at each work site the names, business addresses and contact information of the superintendent(s) of the subcontractors who hold subcontracts with the prime contractor, as well as the particular work they perform, and shall make such information available to department personnel upon request;
2. Special inspection reports. The recipient of a safety registration number shall maintain at the work site such special inspection reports as specified in the building code and shall make such reports available to department personnel on request.

**§28-420.4 Submission of plan to reduce rate of immediately hazardous violations.** The commissioner may require any safety registration recipient to provide the department with a plan to improve its rate of immediately hazardous violations. The plan must be approved by the Department and may include such measures as employment of a safety compliance officer to ensure compliance with the approved plan.

**§28-420.5 Submission of a report to the city council.** Within six months of the date by which all safety registration recipients shall have been required by section 420.1 of this article to have a safety registration number, the commissioner shall, after consultation with representatives of affected industries, including but not limited to representatives and employers of building and construction industry labor organizations and real estate owners, submit to the mayor and the city council recommendations for the establishment of objective criteria on which the commissioner may base a determination to commence a proceeding to suspend, revoke, or refuse to renew a safety registration number as well as the data used in the analysis and formulation of such recommendations. Within three months of the submission, the council shall review and may amend this provision to incorporate standards for the revocation and non-renewal of a safety registration number.

**§28-420.6 Expiration of safety registration number.** A safety registration number shall expire on the third anniversary that such safety registration number was issued or such other date as determined by the commissioner by rule so as to evenly distribute the expiration dates of the safety registration numbers.

**§28-420.7 Unlawful use of safety registration number.** On and after October 1, 2009, it shall be unlawful to represent or cause to be represented that a person who would qualify as a safety registration recipient has been issued a safety registration number by the department or to otherwise convey the impression that an individual, corporation, partnership or other business entity, or any person it employs, conducts business for the purposes that would qualify it as a safety registration recipient that has been issued a safety registration number, unless such individual, corporation, partnership or other business entity has received a safety registration number from the department in accordance with the provisions of this article.

#### **ARTICLE 421 PRIVATE ELEVATOR INSPECTION AGENCY DIRECTOR LICENSE**

**§28-421.1 Private elevator inspection agency director license required.** Only private elevator inspection agencies may perform and/or witness inspections and tests or enter into contracts pursuant to article 304 of chapter 3 of this code. Each such agency shall designate one director in responsible charge who shall be licensed pursuant to this article. The designated director in responsible charge shall be in the direct employ of the agency and shall supervise all the operations of the agency. All work performed by such agency pursuant to article 304 of chapter 3 of this code shall be performed by or under the direct and continuing supervision of the designated director in responsible charge.

**§28-421.1.1 Additional directors.** In addition to the designated director in responsible charge, the agency may have other individuals in its employ who may be issued private elevator inspection agency director licenses pursuant to this article. Notwithstanding any other provision of this chapter, such individuals may only perform inspections or other work pursuant to article 304 of chapter 3 of this code under the direct and continuing supervision of the designated director in responsible charge.

**§28-421.2 Qualifications.** All applicants for a private elevator inspection agency director license shall submit satisfactory proof establishing that the applicant:

1. Has at least ten years of practical experience in the supervision of the assembly, installation, maintenance, repair, design or inspection of elevators within the fifteen years prior to application; or
2. Is an engineer or architect and has at least five years experience in the supervision of the assembly, installation, maintenance, repair, design or inspection of elevators within the seven years prior to application.

**§28-421.3 Director restriction.** Each private elevator inspection agency director shall perform work pursuant to article 304 of chapter 3 of this code for only one private elevator inspection agency, and shall not inspect and/or test elevators or related devices as an inspector or director for any other private elevator inspection agency.

**§28-421.4 Place of business.** Every licensed private elevator inspection agency shall have a place of business within the city.

#### **ARTICLE 422 PRIVATE ELEVATOR INSPECTION AGENCY INSPECTOR LICENSE**

**§28-422.1 Private elevator inspection agency inspector license required.** Individuals who witness and/or perform inspections and tests on behalf of a private elevator inspection agency pursuant to article 304 of chapter 3 of this code shall be licensed pursuant to this article. Licensed inspectors shall perform such work under the direct and continuing supervision of a designated director in responsible charge licensed pursuant to article 421 of this chapter.

**§28-422.2 Qualifications.** Applicants for a private elevator inspection agency inspector license shall submit satisfactory proof establishing that the applicant:

1. Has at least seven years of practical experience in the assembly, installation, repair, design, or inspection of elevators, or as an elevator mechanic within the ten years prior to application.

**§28-422.3 Inspector restriction.** Each private elevator inspection agency shall perform work pursuant to article 304 of chapter 3 of this code for only one private elevator inspection agency, and shall not witness and/or perform inspections and/or test elevators or related devices as an inspector or director for any other private elevator inspection agency.

#### **\*ARTICLE 423 QUALIFICATION FOR GAS WORK**

**\*§28-423.1 Qualification required.** For the purposes of this article, “gas work” means work covered by section 101.2 of the New York city fuel gas code, where such work is required by this code to be performed under the direct and continuing supervision of a licensed master plumber, provided that the term “gas work” shall not include periodic inspections required pursuant to article 318 of chapter 3 of title 28 of the administrative code. On and after January 1, 2020, it shall be unlawful to perform gas work unless such work is performed by:

1. A licensed master plumber; or
2. A person working under the direct and continuing supervision of a licensed master plumber if such person:
  - 2.1. Holds a gas work qualification pursuant to this article; or
  - 2.2. Holds a limited gas work qualification pursuant to this article and is performing such work under the personal and immediate supervision of (i) a person who holds a gas work qualification pursuant to this article or (ii) a licensed master plumber.

**Exception:** The provisions of this article shall not apply to gas work performed, serviced and maintained by utility corporations and subject to the jurisdiction of the New York state public service commission.

**\*§28-423.2 Applications for gas work qualification.** The commissioner shall issue gas work qualifications in accordance with sections 28-423.2.1 and 28-423.2.2.

**\*§28-423.2.1 Applications for gas work qualification submitted before January 1, 2019.** The commissioner shall issue a gas work qualification to a person who before January 1, 2019, submits satisfactory proof establishing that such person is a registered journeyman plumber pursuant to article 409 of this chapter.

**\*§28-423.2.2 Applications for gas work qualification submitted on or after January 1, 2019.** The commissioner shall issue a gas work qualification to a person who on or after January 1, 2019, submits satisfactory proof establishing that such person:

1. Has demonstrated an understanding of and proficiency and competency with gas work, including (i) a working familiarity with the fuel gas code and the ability to apply the requirements of such code correctly, (ii) the application of skills relating to gas work on the job site, (iii) a working knowledge of the tools for gas work and the ability to utilize such tools properly and (iv) an ability to draft simple diagrams and interpret from drawings for the purpose of performing gas work, by satisfying a requirement that the commissioner shall establish by rule; and
2. Satisfies one or more of the following:
  - 2.1. Such person is a registered journeyman plumber pursuant to article 409 of this chapter;
  - 2.2. Such person successfully completed an apprenticeship in plumbing through a program approved by the New York state department of labor and has at least one year of full-time experience performing or supervising plumbing work under the direct and continuing supervision of a licensed master plumber; or
  - 2.3. Such person has at least five years of full-time experience performing or supervising plumbing work under the direct and continuing supervision of a licensed master plumber, provided that at least one year of such experience occurred in the city.

**\*§28-423.2.3 Concurrent applications.** The commissioner shall establish a procedure for concurrently applying for a journeyman plumber registration pursuant to article 409 of this chapter and a gas work qualification pursuant to this section. No application fee shall be charged to an applicant for a gas work qualification if such applicant (i) is, at the time such application is filed, a registered journeyman plumber pursuant to such article or (ii) is applying concurrently for a journeyman plumber registration pursuant to such article and a gas work qualification.

**\*§28-423.3 Applications for limited gas work qualification.** The commissioner shall issue limited gas work qualifications in accordance with sections 28-423.3.1 and 28-423.3.2.

**\*§28-423.3.1 Applications for limited gas work qualification submitted before January 1, 2019.** The commissioner shall issue a limited gas work qualification to a person who before January 1, 2019, submits satisfactory proof that such person has at least six months of full-time experience performing plumbing work under the direct and continuing supervision of a licensed master plumber.

**\*§28-423.3.2 Applications for limited gas work qualification submitted on or after January 1, 2019.** The commissioner shall issue a limited gas qualification to a person who on or after January 1, 2019 submits satisfactory proof establishing that such person:

1. Has at least six months of full-time experience performing plumbing work under the direct and continuing supervision of a licensed master plumber; and
2. Satisfies one or more of the following:
  - 2.1. Such person has successfully completed a training program that (i) relates to gas work, (ii) is at least 16 hours and (iii) is approved by the commissioner;
  - 2.2. Such person is an apprentice in plumbing registered in an apprenticeship program approved by the New York state department of labor; or
  - 2.3. Such person satisfies such other requirement for demonstrating competence with gas work as the commissioner may establish by rule.

**\*§28-423.4 Expiration.** The gas work qualification shall have no expiration and need not be renewed or reissued. The limited gas work qualification shall expire five years after issuance and may not be renewed.

*\*Section 28-423 was added by [Local Law 150 of 2016](#). This law has an effective date of December 6, 2016.*

## CHAPTER 5

# MISCELLANEOUS PROVISIONS

### ARTICLE 501

#### MAINTENANCE PERMIT FOR OUTDOOR SIGNS

**§28-501.1 Permit required.** The commissioner may, in his or her discretion, when necessary in the public interest, establish a permit requirement for signs maintained in the areas described in this article in accordance with the provisions of this article and the rules of the department. On and after a date to be provided by the rules establishing such a permit requirement, and subject to the provisions of section 28-501.6 of this code, it shall be unlawful to place or maintain a sign, as defined in section 12-10 of the zoning resolution, on any building or premises unless a permit for the maintenance of such sign has been issued by the department pursuant to this article if such sign is within a distance of 900 linear feet (274 m) from and within view of an arterial highway or within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of one half acre or more.

**§28-501.1.1 Other permits notwithstanding.** Where a sign maintenance permit has been established by the commissioner pursuant to section 28-501.1 such permit shall be required for all signs maintained in the areas described in such section 28-501.1 and not otherwise excluded under section 28-501.6, whether or not a work permit is required and/or has been issued for the installation, alteration or erection of such sign pursuant to chapter 1 of this title.

**§28-501.1.2 Arterial highway.** For the purposes of this article, the term arterial highway shall include all highways that are shown on the master plan of arterial highways and major streets as principal routes, parkways or toll crossings and that have been designated by the city planning commission as arterial highways to which the provisions of sections 42-55 and 32-66 of the zoning resolution shall apply as shown in appendix H “Designation of Arterial Highways” of the zoning resolution.

**§28-501.2 Application.** Application for a permit or for the renewal of a permit shall be made on forms to be furnished by the department and shall contain such information as the department shall prescribe. Except as otherwise provided in section 28-501.3, a permit shall remain in effect for a period to be determined by rule and may be renewed. The fee for a permit or for its renewal shall be established by rule. The identification number of the permit shall be displayed on the sign or on the building or premises on which the sign is located or both, in a manner to be provided by rule.

**§28-501.3 Permit expiration.** A permit issued pursuant to this article shall expire and be of no further force or effect where:

1. In the case of a sign which is accessory to a principal use within the meaning of section 12-10 of the zoning resolution, there has been a discontinuance of the operation of the principal use to which such sign is accessory, or in the event the sign is no longer in the same ownership as such principal use or is no longer operated and maintained substantially for the benefit or convenience of the owners, occupants, employees, customers or visitors of the principal use;
2. In the case of any sign for which a permit has been issued pursuant to this article, whether or not accessory to a principal use within the meaning of section 12-10 of the zoning resolution, there has been a change in copy which the commissioner has determined renders such sign no longer in compliance with the zoning resolution. The commissioner shall prescribe by rule procedures for the notification to the department concerning changes in copy which have been made on signs for which permits have been issued under this article. Nothing herein shall be construed as limiting the ability of any person to apply for a new permit pursuant to this article.

**§28-501.4 Civil penalties.** Any person who places or maintains a sign on a building or premises without an appropriate permit in violation of this article shall be liable for a civil penalty of, for a first violation, not more than fifteen thousand dollars and, for a second or subsequent violation, not more than twenty-five thousand dollars. Each day's continuance shall be a separate and distinct violation. Such civil penalties may be recovered in an action in any court of appropriate jurisdiction or in a proceeding before the environmental control board. Such board shall have the power to impose the civil penalties provided for in this article. Notwithstanding the provisions of section six hundred sixty-six of the charter, a notice of violation issued by the department pursuant to this section 28-501.4 shall not be subject to review by the board of standards and appeals.

**§28-501.5 Construction.** This chapter shall not be construed to grant the right to place or maintain a sign on any building or premises where the placement or maintenance of such sign would otherwise be prohibited pursuant to the zoning resolution, the administrative code or any other provision of law. No permit for a sign issued hereunder shall be deemed to constitute permission or authorization to maintain a sign which is unlawful pursuant to any other provisions of law nor shall any permit issued hereunder constitute a defense in an action or proceeding with respect to such an unlawful sign.

**§28-501.6 Exemption.** The provisions of this article shall not apply to:

1. Signs with a surface area of 200 square feet (19 m<sup>2</sup>) or less that are located no higher than 3 feet (914mm) above the floor

of the second story of the building on which the sign is located; and

2. Signs under the control of an outdoor advertising company and included on a certified list of signs, sign structures, and sign locations under the control of such company required to be filed with the department pursuant to this chapter.

## **ARTICLE 502 OUTDOOR ADVERTISING COMPANIES**

**§28-502.1 Definitions.** As used in this chapter, the following terms shall have the following meanings:

**AFFILIATE.** An outdoor advertising company having a controlling interest in another outdoor advertising company or in which such other outdoor advertising company has a controlling interest. In addition, where a person or entity has controlling interests in two or more outdoor advertising companies, such outdoor advertising companies shall be considered affiliates of each other. A “controlling interest” means actual working control, in whatever manner exercised, including without limitation, control through ownership, management, debt instruments or negative control, as the case may be, as defined in rules of the department.

**OUTDOOR ADVERTISING COMPANY.** A person, corporation, partnership or other business entity that as a part of the regular conduct of its business engages in or, by way of advertising, promotions or other methods, holds itself out as engaging in the outdoor advertising business.

**OUTDOOR ADVERTISING BUSINESS.** The business of selling, leasing, marketing, managing, or otherwise either directly or indirectly making space on signs situated on buildings and premises within the city of New York available to others for advertising purposes, whether such advertising directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered on the same or a different zoning lot and whether such sign is classified as an advertising sign pursuant to section 12-10 of the zoning resolution.

**SIGN.** A sign as defined in section 12-10 of the zoning resolution except that such term shall not include any sign subject to regulation by the department of transportation.

**SIGN LOCATION.** A building or premises on which an outdoor advertising company is entitled to sell, lease, market, manage or otherwise either directly or indirectly make space on signs available to customers, irrespective of whether a sign exists on such building or premises.

**UNDER THE CONTROL OF AN OUTDOOR ADVERTISING COMPANY** in reference to a sign, sign structure, or sign location. That space on such sign, sign structure, or at such sign location that is sold, leased, marketed, managed or otherwise either directly or indirectly made available to others for any purposes by such outdoor advertising company.

**§28-502.2 Registration of outdoor advertising companies.** On and after a date to be provided by rule, it shall be unlawful for an outdoor advertising company to engage in the outdoor advertising business or, by way of advertising, promotions or other methods, hold itself out as engaging in the outdoor advertising business unless such company is registered in accordance with this code and the rules of the department. Such rules shall establish a procedure pursuant to which the department may require the single registration of an outdoor advertising company and its affiliates. An outdoor advertising company and its affiliates made subject to single registration shall be considered a single outdoor advertising company for purposes of this code.

**§28-502.2.1 Application.** Application for registration or the renewal of registration shall be made on forms to be furnished by the department, may be made through electronic means, and shall contain such information as the department shall prescribe. Registration shall remain in force for two years and may be renewed. The fee for such registration and for the renewal of such registration shall be established by rule and may be based on the number of signs in the registered inventory.

**§28-502.2.2 Security.** Each outdoor advertising company shall post a bond or provide another form of security to the city in an amount to be determined by the department by rule to cover:

1. All costs incurred by the city pursuant to this code for painting over, covering, rendering ineffective or for the removal and storage of an illegal sign or sign structure under the control of such outdoor advertising company; and
2. All fines or civil penalties imposed against such company pursuant to this chapter.

**§28-502.3 Revocation or suspension of registration.** The department may revoke, suspend or refuse to renew the registration of an outdoor advertising company or impose fines or other penalties where it is determined by the commissioner, after notice and the opportunity to be heard, that (i) such company has made statements that it knew or should have known are false in any application or certification filed with the department, (ii) such company has failed to comply with section 28-502.4 of this code or the rules adopted pursuant to its provisions by failing to file a listing of signs, sign structures and sign locations under its control as specified in such section within the time and in the manner required by department rules or by filing an incomplete listing of signs, sign structures and sign locations under its control as specified in such section, (iii) such company has been found liable for or has admitted to violations of the zoning resolution under section 28-502.6 of this code committed on three or more occasions within a 36 month period, where such violations relate to the erection, maintenance, attachment, affixing, painting or representation in any other manner on a building or premises of advertising signs, as defined in section 12-10 of the zoning

resolution, at locations where the display of such advertising signs is not permitted under the zoning resolution or at locations where the display of such advertising signs violates the size, height, or illumination provisions of the zoning resolution, and such signs are located within a distance of nine hundred linear feet from and within view of an arterial highway or within 200 linear feet (60 960 mm) from and within view of a public park with an area of one half acre or more, (iv) such company has failed to pay any civil penalties imposed or amounts owed to the city pursuant to section 28-502.6 of this code or article 503 of this chapter or, (v) such company has violated the department's rules pertaining to outdoor advertising companies. No application for registration by an outdoor advertising company or any affiliate thereof shall be accepted for filing by the department for a period of five years after revocation of or the refusal to renew the registration of such outdoor advertising company pursuant to this code. The department shall not accept or process any applications for permits to install, erect or alter signs pursuant to this code or for the maintenance of signs pursuant to section 28-501.1 of this code where such applications are filed by or where such signs are under the control of an outdoor advertising company or any affiliate thereof after the registration of such outdoor advertising company has been revoked or not renewed or during the term of any period of suspension of such registration. The commissioner may settle any proceeding in which the revocation, suspension or renewal of an outdoor advertising company's registration is at issue upon such terms and conditions as he or she may deem appropriate including but not limited to the agreement of an outdoor advertising company to remove signs along with supporting sign structures as a condition for the dismissal of such proceeding.

**§28-502.4 Reporting requirement.** An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

1. The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of 1/2 acre (5000 m) or more.
2. The commissioner may, by rule, expand the scope of such list to include the reporting of other signs, sign structures and sign locations, as specified in such rule.

**§28-502.4.1 Form of list.** The list shall be in such form, containing such information and filed at such periodic intervals or upon such other conditions, as the department shall prescribe by rule.

**§28-502.4.2 Other required information.** Such list shall also indicate the work permit identification numbers for the erection, alteration or installation of such signs pursuant to chapter 1 of this title and for the maintenance of such signs pursuant to article 501, unless a permit is not required pursuant to such provisions, as well as the name and license number of the master or special sign hanger who hung or erected each such sign.

**§28-502.4.3 Certification of list.** Such list shall be accompanied by (i) a certification by an architect or engineer, co-signed by a responsible officer of the outdoor advertising company, that all signs reported on such list are in compliance with the zoning resolution; (ii) copies of proof that the sign complies with the zoning resolution and a certification by the sign's owner that to the best of the certifier's knowledge and belief the information provided is accurate, or (iii) a written opinion by the department, stating that the sign to which the opinion refers complies with the zoning resolution. Notwithstanding any inconsistent provision of this code, where, in accordance with the department's rules, the department renders an opinion, determination or decision relating to whether a sign is nonconforming or whether it is located in proximity to an arterial highway as defined by the zoning resolution, such decision, determination or opinion will be appealable to the board of standards and appeals in accordance with applicable law. If a timely appeal to such board is taken, the department shall not issue a notice of violation with respect to such sign pending a determination of such appeal by such board.

**§28-502.4.4 Public access to list.** The commissioner shall make all listings filed pursuant to this article accessible to the public.

**§28-502.5 Display of name and registration number of outdoor advertising company.** On and after a date to be prescribed by rule, the commissioner shall require that each outdoor advertising company display, in a manner to be provided by rule, on each sign under its control or on the building or premises where each sign under its control is located or both, (i) the name and registration number of such company and, (ii) unless a permit is not required, the work permit identification number for the installation, alteration or erection of the sign pursuant to chapter 1 of this code and, if applicable, for the maintenance of the sign pursuant to article 501.

**§28-502.6 Criminal and civil penalties.** Outdoor advertising companies that violate the zoning resolution, this code, the 1968 building code or rules of the department shall be subject to criminal and civil penalties in accordance with this article.

**§28-502.6.1 General.** Notwithstanding any other provision of law, an outdoor advertising company shall be liable for a civil penalty in accordance with this article if a sign under its control has been erected, maintained, attached, affixed, painted on, or in any other manner represented on a building or premises in violation of any provision of the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto relating to signs.

**§28-502.6.2 Unlawful for outdoor advertising company to sell space on illegal sign.** It shall be unlawful for an outdoor

advertising company to sell, lease, market, manage or otherwise make available to others for advertising purposes space on a sign that has been erected, maintained, attached, affixed, painted on or in any other manner represented on a building or premises in violation of any provision of the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto or to enter into any agreement for such purpose.

**§28-502.6.3 Unlawful to transfer sign to unregistered outdoor advertising company.** On and after a date to be provided by rule, it shall be unlawful for an outdoor advertising company to sell or otherwise transfer control of a sign or sign location or of any right of such company to sell, lease, market, manage or otherwise make space on a sign or at a sign location available to others for advertising purposes to an outdoor advertising company that is not registered in accordance with this article and the rules of the department.

**§28-502.6.4 Civil penalty.** An outdoor advertising company that violates any of the provisions of this article shall be subject to a civil penalty of, for a first violation, not more than fifteen thousand dollars and, for a second or subsequent violation, not more than twenty-five thousand dollars. Each day's continuance shall be a separate and distinct violation.

**§28-502.6.5 Criminal penalty.** Notwithstanding any inconsistent provision of law, an outdoor advertising company shall, upon being found guilty, be subject to fines or imprisonment or both pursuant to this code if a sign under its control has been erected, maintained, attached, affixed, painted on, or in any other manner represented on a building or premises in violation of any provision of the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto relating to signs.

**§28-502.6.6 Activity by unregistered company.** On and after a date to be provided by rule, an outdoor advertising company that engages in the outdoor advertising business or, by way of advertisement, promotion or other methods holds itself out as engaging in the outdoor advertising business without registering with the department pursuant to this chapter, or, after such registration has been revoked or not renewed pursuant to this code continues to engage in such business beyond a date specified by the commissioner in his or her determination to revoke or not renew, shall be guilty of a misdemeanor subject to a fine not to exceed five thousand dollars or a sentence of imprisonment of not more than one year or both such fine and imprisonment for each offense. In the case of a continuing violation each day's continuance shall be a separate and distinct violation. Such company shall also be liable for a civil penalty of, for a first violation, not more than fifteen thousand dollars and, for a second or subsequent violation, not more than twenty-five thousand dollars. Each day's continuance shall be a separate and distinct violation.

**§28-502.6.7 Venue.** Civil penalties may be recovered in an action in any court of appropriate jurisdiction or in a proceeding before the environmental control board. Such board shall have the power to impose the civil penalties provided for in this article. Notwithstanding the provisions of section six hundred sixty-six of the charter, a notice of violation issued by the department pursuant to this article shall not be subject to review by the board of standards and appeals.

**§28-502.7 Signs under control of unregistered outdoor advertising company are public nuisance.** On and after a date to be provided by rule, it shall be unlawful to erect, maintain, attach, affix, paint on, or in any other manner represent on a building or premises any sign that is under the control of an unregistered outdoor advertising company. In addition to or as an alternative to any other remedies or penalties provided under any other provision of law, the commissioner may commence a proceeding for the removal of such sign or its sign structure or both in accordance with the procedures set forth in this code for the abatement of a nuisance and any such sign and its sign structure is hereby declared to be a public nuisance pursuant thereto. All of the provisions of article 503 of this chapter shall apply to the removal of a sign pursuant to this article except that a sign under the control of an unregistered outdoor advertising company may be removed whether or not it is in compliance with the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto, and irrespective of whether it has a surface area greater than 200 square feet (19 m<sup>2</sup>).

**§28-502.8 Franchise or concession disqualification.** Notwithstanding any other provision of law to the contrary, an outdoor advertising company, or any affiliate thereof, that has been found guilty of a misdemeanor or liable for a civil penalty pursuant to this article or whose registration has been revoked shall be considered ineligible for the award of any city franchise or concession, and shall be prohibited from administering any advertising program on behalf of a city franchisee or concessionaire, for a period of five years following judgment or decision.

**§28-502.9 Investigations.** The department may investigate any matter within the jurisdiction conferred by this chapter and shall have full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation. The department of investigation may, at the request of the commissioner, assist the department in any investigation conducted pursuant to this article.

### **ARTICLE 503 NUISANCE ABATEMENT FOR ILLEGAL SIGNS**

**§28-503.1 General.** A sign with a surface area greater than 200 square feet (19 m<sup>2</sup>) that is erected, maintained, attached, affixed,

painted on, or in any other manner represented on a building or premises in violation of the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto is hereby declared to be a public nuisance. The commissioner may, after notice and hearing, order the removal of such illegal sign or its sign structure or both, as hereinafter provided.

**§28-503.2 Notice.** The commissioner shall serve a notice of hearing with regard to the proposed nuisance abatement on the owner and mortgagee of record of the building or premises and other persons having a recorded interest in the property in the manner provided in article 212 of chapter 2 of this title for the service of an order of closure. If the sign is under the control of an outdoor advertising company and an address for such company is reasonably ascertainable, the notice shall also be served on such outdoor advertising company by mail to the last known address for such company or, if such company is registered in accordance with section 28-502.2, at the address provided to the department by the registrant.

**§28-503.3 Hearing.** The office of administrative trials and hearings shall conduct the hearing. The administrative law judge assigned to hear the matter shall submit his or her proposed findings of fact and recommended disposition to the commissioner. If based on such recommended disposition, proposed findings of fact and the record of the hearing the commissioner determines (i) that the sign has a surface area greater than 200 square feet (19 m<sup>2</sup>) and, (ii) that the sign has been erected, maintained, attached, affixed, painted on, or in any other manner represented on the building or premises in violation of the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto, he or she may order the removal of the illegal sign or its sign structure or both.

**§28-503.3.1 Lack of knowledge no defense.** At such hearing it shall not be a defense that an owner or other person having an interest in the property lacked knowledge of or did not participate in the erection or maintenance of the illegal sign.

**§28-503.4 Posting of order.** The commissioner's order of removal shall be posted, mailed and filed in the manner provided in this code for an order of closure.

**§28-503.5 Enforcement of order.** On or after the tenth business day after the posting of such order and upon the written directive of the commissioner, police officers and authorized representatives of the department shall act upon and enforce such order by removing, covering, painting over or otherwise rendering ineffective the illegal sign or its sign structure or both. Such work shall at all times be performed by a licensed sign hanger where required by law. Nothing in this article shall be construed to prohibit an owner or other person having an interest in the property from removing or causing the removal of an illegal sign or its sign structure prior to the arrival of such enforcement officers. On and after the posting of such removal order, no further permits for signs shall be issued for such building or premises pursuant to this code and, if the sign structure is not removed, no further display shall be exhibited on such sign structure unless and until the commissioner rescinds such order.

**§28-503.6 Rescission of order.** The commissioner may rescind the order if the owner or other person having an interest in the building or premises provides assurance in a form satisfactory to the commissioner that all signs erected or maintained at such building or premises will be in compliance with the zoning resolution, this code, the 1968 building code or rules adopted pursuant to such provisions. If such order is rescinded, the commissioner shall, upon request of such owner, mortgagee or other person, provide a certified copy of such rescission which may be filed with the county clerk or register of the county in which such building or premises is located.

**§28-503.7 Costs.** The costs and expenses for painting over, covering, rendering ineffective or for the removal and storage of such sign and its sign structure may be recovered from the owner of the premises or, if the illegal sign is under the control of an outdoor advertising company and notice was served on such company in accordance with this article, from such outdoor advertising company. Such amounts may be recovered by the city in an action or proceeding in any court of appropriate jurisdiction and, with respect to amounts owed by an outdoor advertising company, by drawing upon any bond posted or other security provided by such company pursuant to section 28-502.2. Nothing in this article shall be construed to limit the ability of an owner to seek recovery of such costs and expenses from any other party.

**§28-503.8 Lien.** In addition, such costs and expenses shall constitute a lien on the land and building on which the sign was located which may be entered and enforced pursuant to the provisions of this code in the same manner as an unpaid fee.

**§28-503.9 Storage and disposal.** The commissioner shall adopt rules to provide for the storage and disposal of any sign or sign structure removed pursuant to this article. If the identity and address of the owner of such property is reasonably ascertainable, notice of the removal shall be sent to the owner within a reasonable period of time after the removal. If such property is not claimed within thirty days after its removal, it shall be deemed to be abandoned and may be sold at a public auction after having been advertised in the City Record and the proceeds paid into the general fund or if the commissioner determines that the property is not saleable, he or she may turn over such property to the department of sanitation for disposal. Property removed pursuant to this article shall be released to the owner or other person lawfully entitled to possession upon payment of the costs of removal and storage as set forth in the rules of the department and any fines or civil penalties imposed for the violation or, if an action or proceeding for the violation is pending in court or before the environmental control board, upon the posting of a bond or other form of security acceptable to the department in an amount which will secure the payment of such costs and any fines or civil

penalties which may be imposed for the violation.

**§28-503.10 Definitions.** For the purposes of this article the terms “sign” and “surface area,” in reference to a sign, shall be as defined under section 12-10 of the zoning resolution.

**§28-503.11 Review of order.** An order of the commissioner issued pursuant to this article shall be a final determination of the commissioner for purposes of review pursuant to article seventy-eight of the civil practice law and rules. Notwithstanding any inconsistent provision of paragraph (a) of subdivision six of section six hundred sixty-six of the New York city charter, such order shall not be subject to review by the board of standards and appeals.

#### ARTICLE 504

##### \*BICYCLE ACCESS TO BUILDINGS

*\*Section 28-504 was amended by [Local Law 105 of 2016](#). This law has an effective date of September 28, 2016.*

**\*§28-504.1 Bicycle access to certain office buildings.** This section shall apply to buildings that satisfy each of the following conditions: (i) the main occupancy of such building is offices that are classified as occupancy group B, (ii) such building was in existence on December 11, 2009, or a permit for such building has been issued on or before such date but such building has not yet been completed, (iii) such building has a freight elevator that either complies with ASME 17.1 with regard to the carrying of passengers on freight elevators, as referenced in chapter 35 of the New York city building code, or is operated by a freight elevator operator, and (iv) is not subject to the bicycle parking provisions of sections 25-80, 36-70 and 44-60 of the zoning resolution. It shall be presumed that if a freight elevator is available for carrying freight, it is available for carrying bicycles.

*\*Section 28-504.1 was amended by [Local Law 105 of 2016](#). This law has an effective date of September 28, 2016.*

**\*§28-504.1.1 Request for bicycle access.** The tenant or subtenant of a building to which this section is applicable may request in writing, on a form provided by the department of transportation, that the owner of such building complete a bicycle access plan in accordance with section 28-501.1.2 and provide bicycle access in accordance with such plan. Such request shall include a certification by such tenant or subtenant that there is sufficient space within such tenant's or subtenant's premises to store the requested number of bicycles in a manner that does not violate the building or fire code or any other applicable law, rule or code, or which would impede ingress or egress to such premises or building. Such request shall be sent to such owner by certified mail, return receipt requested, and a copy of the request shall be filed with the department of transportation.

*\*Section 28-504.1.1 was amended by [Local Law 105 of 2016](#) and [Local Law 107 of 2016](#). These laws have an effective date of September 28, 2016.*

**\*§28-504.1.2 Bicycle access plan.** Bicycle access plans shall comply with sections 28-504.1.2.1 through 28-504.1.2.3.

*\*Section 28-504.1.2 was amended by [Local Law 105 of 2016](#). This law has an effective date of September 28, 2016.*

**\*§28-504.1.2.1 Owner requirement.** Where a request for a bicycle access plan has been submitted pursuant to this section, the owner of such building shall, within 30 days after receipt of such request, complete and implement a bicycle access plan or provide to the tenant or subtenant a copy of the request for an exception that has been filed with the department of transportation in accordance with section 28-504.1.3.

*\*Section 28-504.1.2.1 was amended by [Local Law 105 of 2016](#) and [Local Law 107 of 2016](#). These laws have an effective date of September 28, 2016.*

**\*§28-504.1.2.2 Contents of plan.** A bicycle access plan shall be completed on a form provided by the department of transportation and shall include, at a minimum:

1. Provisions for at least one freight elevator to satisfy each of the following conditions:
  - 1.1. Such elevator will be made available for bicycle access for each building tenant or subtenant who requests such access, and employees thereof, during the regulating operating hours of such elevator;
  - 1.2. Bicycles will be allowed to be transported to and from such elevator along each route that is used to transport freight to and from such elevator, to the extent practicable and where such routes do not present substantial safety risks; and
  - 1.3. No escort by building personnel will be required for a person transporting a bicycle to or from such elevator if no such escort is required when a person is transporting freight to or from such elevator;
  - 1.4. A person transporting a bicycle to or from such elevator, and any package or other material in such person's possession, shall be subject to the same or substantially similar security measures applicable to other persons entering such building or such elevator;
2. Provisions allowing bicycles to be brought in or out of such building using one or more designated passenger elevators that the building owner may designate as temporary freight elevators at any time when no freight elevator satisfying the conditions of item 2.1 is operational;

3. The location of building entrances;
4. The route to freight elevators that accommodate bicycle access;
5. The route to a designated area for bicycle parking on an accessible level if such bicycle parking is made available;
6. A notice to tenants and subtenants informing them of their responsibilities with respect to bicycle storage; and
7. Such other information as the department of transportation may require.

*\*Section 28-504.1.2.2 was amended by [Local Law 105 of 2016](#) and [Local Law 107 of 2016](#). These laws have an effective date of September 28, 2016.*

**\*§28-504.1.2.3 Amendment of plan.** A bicycle access plan may be amended from time to time to accommodate requests from other tenants or subtenants to provide bicycle access pursuant to this article.

*\*Section 28-504.1.2.3 was amended by [Local Law 105 of 2016](#) and [Local Law 107 of 2016](#). These laws have an effective date of September 28, 2016.*

**\*§28-504.1.2.4 Limitations.** If an owner of a building is issued a violation of this code or the New York city fire code, or a rule promulgated thereunder, that results from storage of a bicycle, and such owner shows that such violation occurred in an area of such building that is under the control of a tenant or subtenant, such owner may restrict or limit bicycle access under the bicycle access plan for such tenant or subtenant.

*\*Section 28-504.1.2.4 was amended by [Local Law 105 of 2016](#) and [Local Law 107 of 2016](#). These laws have an effective date of September 28, 2016.*

**\*§28-504.1.3 Exceptions.** Bicycle access need not be provided pursuant to this section if the commissioner of transportation grants an exception for such building under this section. Such commissioner may grant such an exception if an owner of such building applies to such commissioner for an exception, on a form provided by the department of transportation and sent to the department of transportation by certified mail, return receipt requested, within fifteen days after such owner has received a request for a bicycle access plan, and certifies that either:

1. No freight elevator in such building is available for the use described in this section because unique circumstances exist involving substantial safety risks directly related to the use of each such elevator. Such application shall include the reasons for such assertion and supporting documentation; or
2. There is sufficient secure alternate covered no-cost off-street bicycle parking or sufficient secure alternate indoor no-cost bicycle parking available on the premises or within four blocks or 1,000 feet (304.8 m), whichever is less, of such building to accommodate all tenants or subtenants of such building requesting bicycle access and that such off-street parking is accessible on a 24-hour basis. Such application shall include supporting documentation for such assertion, including proof that such alternate off-street or indoor parking is available to or under the control of such owner.

If an exception is sought pursuant to item 1 of this section, the department shall conduct an inspection of the building and each freight elevator and shall thereafter issue a final determination as to whether to grant an exception. If an exception is sought pursuant to item 2 of this section, the department, in consultation with the department of transportation, shall thereafter conduct an inspection of the secure alternate no-cost covered off-street bicycle parking, secure indoor no-cost bicycle parking and the department of transportation shall thereafter issue a final determination as to whether to grant an exception. In either event, a letter of exception or denial shall be sent by certified mail, return receipt requested, to the owner, lessee, manager or other person in control of the building. If the exception is denied, a bicycle access plan shall be posted within 20 days after receipt of such determination. Failure to timely post a bicycle access plan shall be cause for the issuance of a violation.

*\*Section 28-504.1.3 was amended by [Local Law 105 of 2016](#) and [Local Law 107 of 2016](#). These laws have an effective date of September 28, 2016.*

**\*§28-504.1.4 Posting and availability of bicycle access plan or letter of exception.** Bicycle access plans shall be posted and made available as provided in sections 28-504.1.4.1 through 28-504.1.4.3.

*\*Section 28-504.1.4 was amended by [Local Law 105 of 2016](#) and [Local Law 107 of 2016](#). These laws have an effective date of September 28, 2016.*

**\*§28-504.1.4.1 Posting of plan.** The owner of a building subject to this section shall either post in such building each bicycle access plan that is in effect, notifying the requesting tenants and subtenants of their right to bicycle access in accordance with such plan, or shall post a notice in the building lobby indicating that such plan is available in the office of the building manager upon request. Either such posting shall be made within five days after completion of such plan. Such posting or notice shall indicate the other tenants or subtenants are entitled to access according to the plan upon request,

provided such tenants and subtenants, upon making such request, certify that there is sufficient space within such tenant's or subtenant's premises to store the requested number of bicycles in a manner that does not violate the building or fire code or any other applicable law, rule or code, or which would impede ingress or egress to such premises or building.

*\*Section 28-504.1.4.1 was amended by [Local Law 105 of 2016](#) and [Local Law 107 of 2016](#). These laws have an effective date of September 28, 2016.*

**\*§28-504.1.4.2 Posting of exception letter.** The owner of such building shall post in such building any letter of exception granted by the commissioner or commissioner of transportation, including the basis or bases for the exception and, if applicable, the route to alternate off-street or indoor parking, as provided in section 28-504.1.3, or shall post a notice in the building lobby indicating that such letter is available in the office of the building manager upon request. Either such posting shall be made within five days after receipt of such letter of exception.

*\*Section 28-504.1.4.2 was amended by [Local Law 105 of 2016](#) and [Local Law 107 of 2016](#). These laws have an effective date of September 28, 2016.*

**\*§28-504.1.4.3 Location.** Plans, letters of exception or notices of availability of either shall be posted in a prominent location easily visible to a building's tenants, subtenants and the building's employees, and shall be made available upon request by the department, the department of transportation or authorized representatives of any other city agency.

*\*Section 28-504.1.4.3 was amended by [Local Law 105 of 2016](#) and [Local Law 107 of 2016](#). These laws have an effective date of September 28, 2016.*

**\*§28-504.1.5 Filing of plan.** The department or department of transportation may require that plans implemented pursuant to the provisions of this section be filed with either such agency.

*\*Section 28-504.1.5 was amended by [Local Law 105 of 2016](#). This law has an effective date of September 28, 2016.*

**\*§28-504.2 Construction.** Nothing in this article shall be construed to require an owner of a building governed by this article to provide space for bicycles brought into such building or to permit a bicycle to be parked in a manner that violates building or fire codes or any other applicable law, rule or code, or which otherwise impedes ingress or egress to such building.

*\*Section 28-504.2 was amended by [Local Law 105 of 2016](#) and [Local Law 107 of 2016](#). These laws have an effective date of September 28, 2016.*

**\*§28-504.3 Foldable bicycle access.** It shall be unlawful for an owner of a building the main occupancy of which is offices that are classified in occupancy group B to bar a tenant or subtenant from transporting a foldable bicycle to or from such tenant or subtenants space on a passenger elevator, provided that such bicycle is fully folded. For purposes of this section, the term "foldable bicycle" means a bicycle designed to fold into a compact assembly not exceeding 20 inches (508 mm) by 36 inches (914 mm) by 32 inches (813 mm).

*\*Section 28-504.3 was added by [Local Law 105 of 2016](#). This law has an effective date of September 28, 2016.*

**\*§28-504.4 Emergencies.** In an emergency that requires an evacuation of all or part of such a building, the owner may limit or restrict bicycles and foldable bicycles from being transported through any means of egress.

*\*Section 28-504.4 was added by [Local Law 105 of 2016](#). This law has an effective date of September 28, 2016.*

**\*§28-504.5 Bicycle access to residential buildings.** In any building the main use or dominant occupancy of which is classified as occupancy group R-2 it shall be unlawful for an owner to bar a tenant or subtenant from using a passenger elevator to transport a bicycle to and from such tenant's or subtenant's dwelling unit.

#### **Exceptions:**

1. An owner may bar tenants or subtenants from utilizing passenger elevators to transport bicycles where (i) a freight elevator is provided for bicycle access to and from such tenants' or subtenants' dwelling units, provided that passenger elevators may be used during any period of time such freight elevator is not operating and (ii) there is no requirement that building personnel escort such tenants or subtenants when using the freight elevator.
2. An owner may limit bicycle access to one or more passenger elevators designated for such access.

*\*Section 28-504.5 was repealed by [Local Law 105 of 2016](#). This law has an effective date of September 28, 2016.*

*\*Section 28-504.5 was added by [Local Law 106 of 2016](#). This law has an effective date of September 28, 2016.*

**\*§28-504.6 Foldable bicycles on passenger elevators in residential buildings.** In any building classified in occupancy group R, it shall be unlawful for an owner to bar a tenant or subtenant from transporting a foldable bicycle on a passenger elevator provided that such bicycle is fully folded. For purposes of this section, the term "foldable bicycle" means a bicycle designed to fold into a compact assembly not exceeding 20 inches by 36 inches by 32 inches.

*\*Section 28-504.6 was added by [Local Law 106 of 2016](#). This law has an effective date of September 28, 2016.*