



Issuance # 198

DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES

60 HUDSON STREET, NEW YORK, N. Y. 10013

CHARLES M. SMITH, Jr., R.A. Commissioner

PETER FRANCONERI, P.E.  
Assistant Commissioner/Operations

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OPERATIONS  
POLICY AND PROCEDURE NOTICE # 19/89

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To: Distribution  
From: Peter Franconeri *CF*  
Date: October 3, 1989  
Subject: Local Law 58/88 - Work without a Permit

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Effective: Immediately

Purpose

To provide a procedure whereby building owners may claim exemption from civil penalties imposed pursuant to Administrative Code Section 26-212.1.

Acceptance of Waiver Request

If a violation is issued for work in progress after January 1, 1989, no claim of exemption from a civil penalty imposed pursuant to Administrative Code Section 26-212.1 will be considered.

If a building owner claims exemption from such penalty on the ground that all work was completed prior to January 1, 1989, such claim must be substantiated by an affidavit and supporting data.

Partial exemption from such penalty may be claimed on the ground that a building owner applies for a permit subsequent to the commencement of work for which such permit is required but prior to the completion of such work. Such owner may claim exemption from such penalty for that part of such work which is completed after such permit is issued. Such claim shall be filed at the time of application for such permit and shall be substantiated by an affidavit and supporting data.

### Burden of Proof

The burden of proof is on the owner claiming such exemption.

Supporting data shall consist of one or more of the following:

1. dated receipt or cancelled check showing payment for work completed or materials delivered;
2. signed contract specifying dates by which work is to be completed;
3. affidavits from contractors or building supply warehouses concerning the subject illegal work;
4. written estimates proposed by contractors prior to commencement of the subject illegal work;
5. dated photographs of the subject property;
6. proof of compliance with Workers' Compensation Law insurance requirements;
7. a survey of the subject property made prior to January 1, 1989
8. any other documents deemed acceptable by the Commissioner.

While no one of the above-listed documents will be deemed dispositive, appropriate weight will be accorded to the application in its entirety, taking into account the particular facts and circumstances on a case-by-case basis.

In addition to the above-mentioned procedure, the Department may grant waivers from civil penalties imposed pursuant to Administrative Code Section 26-212.1 on a case-by-case basis under certain unique circumstances. Examples of cases where such waivers would be granted include the following:

- A. If emergency work is performed to secure a site, replace a boiler or any other emergency work and an application for such work is filed with the department within one (1) business day after initiation of such work.
- B. If the owner of the premises is the City of New York.

C. If a work without permit violation was issued for work on floor A and a permit is now being requested for floor B, where floors A and B are owned (leased) by different parties.

Where to File

All claims for exemptions pursuant to these regulations must be submitted in writing to the Borough Superintendent of the appropriate borough office. The Borough Superintendent will review the claim and supporting documents and will advise the claimant of the decisions of the Department.

PF:HG:mh