

NEW YORK CITY DEPARTMENT OF BUILDINGS

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Buildings (DOB) is proposing amendments to Section 101-08 of Title 1 of the Rules of the City of New York relating to required liability insurance.

When and where is the hearing? DOB will hold a public hearing on the proposed rule. The public hearing will take place at 10am on 8/29/14. The hearing will be in the 3rd floor conference room at 280 Broadway.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DOB through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to dobrules@buildings.nyc.gov.
- **Mail.** You can mail written comments to the New York City Department of Buildings, Office of the General Counsel, 280 Broadway, 7th floor, New York, NY 10007.
- **Fax.** You can fax written comments to the New York City Department of Buildings, Office of the General Counsel, at 212-566-3843.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-393-2085. You can also sign up in the hearing room before the hearing begins on 8/29/14. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by 8/29/14.

Do you need assistance to participate in the hearing? You must tell the Office of the General Counsel if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-393-2085. You must tell us by 8/22/14.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, written comments and a summary of oral comments received at the hearing will be available to the public at the Office of the General Counsel.

What authorizes DOB to make this rule? Sections 643 and 1043(a) of the City Charter and Section 28-103.15 of the New York City Administrative Code authorize DOB to make this proposed rule. This proposed rule was included in DOB's regulatory agenda for this Fiscal Year.

Where can I find the DOB's rules? The DOB's rules are in Title 1 of the Rules of the City of New York.

What rules govern the rulemaking process? DOB must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

These rule amendments are proposed pursuant to the authority of the Commissioner of the New York City Department of Buildings “Department” under Sections 643 and 1043(a) of the New York City Charter and Section 28-103.15 of the New York City Administrative Code. Under Section 28-103.15, the Commissioner may require an applicant for a work permit to provide proof of workers’ compensation, disability and general liability insurance for a project “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.” Section 101-08 of Title 1 of the Rules of the City of New York sets forth the specific proof-of-insurance requirements that applicants for work permits must satisfy in order for the Department to issue or renew the necessary permit.

The proposed amendments to Section 101-08:

- Amend the list of the types of permits to which the rule applies. This will make the rule line up with changes that Local Law 141 of 2013 made to the Administrative Code;
- Add a requirement of \$1 million in liability insurance for the installation of scaffolds and sidewalk sheds;
- Clarify that project-specific liability insurance (when required) must cover the type of work to be performed as described in the permit;
- Add a requirement of \$2 million in liability insurance for raising or moving a building;
- Eliminate the requirement that a permittee’s liability insurance policy contain a certain cancellation provision, because the inclusion of such provision is already required under the New York State Insurance Law;
- Prohibit a permittee’s liability insurance policy from containing exclusions for work performed within the city of New York or for the type of work described in the work permit;
- Correct a typographical error in the official publication of the rule related to the proposed number of stories for a certain category of buildings that has a \$25 million insurance requirement for a new building or major alteration.

The Department of Buildings’ authority for these rules is found in Sections 643 and 1043 of the New York City Charter and Section 28-103.15 of the New York City Administrative Code.

New text is underlined. [Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Paragraph (3) of subdivision (a) of section 101-08 of title 1 of the rules of the city of New York is amended to read as follows:

(3) Permit. Any of the permit types set forth in items 1-[4]5 of Administrative Code §28-105.2, as well as permits for the installation of sidewalk sheds or scaffolds.

§ 2. Subparagraph (i) of paragraph (1) of subdivision (d) of section 101-08 of title 1 of the rules of the city of New York is amended to read as follows:

- (i) As a condition to the issuance or renewal of a permit for which project-specific liability insurance is required under Table 1 in subparagraph (ii) of this paragraph, the permittee shall procure and maintain commercial general liability insurance for the type of work to be performed as described in the permit, with total per-occurrence and aggregate limits at least as high as those set forth in Table 1. This total minimum limit may be achieved through any combination of primary, excess, umbrella or wrap-up policies, so long as those policies:
 - (A) are issued by a company or companies that may lawfully issue the required policy and has an A.M. Best rating of at least A-"VII" or a Standard and Poor's rating of at least A;
 - (B) provide coverage at least as broad as set forth in the most recent edition of Insurance Services Office (ISO) Form CG 0001;
 - (C) provide that the city, together with its officials and employees, is an Additional Insured with coverage at least as broad as set forth in the most recent edition of ISO Forms CG 2012 or CG 2026;
 - (D) provide a total aggregate limit of coverage (equal to or above the per-occurrence limit) that applies exclusively to the project for which the permit is issued (pursuant to a project-specific policy or a per-project aggregate limit endorsement such as ISO Form CG 2503); and
 - (E) contain none of the following exclusions:
 - 1. completed operations exclusion;
 - 2. XCU exclusion;
 - 3. [contractual liability exclusion] an insured contract exclusion broader than any contained in the most recent edition of ISO Form CG 0001;
 - 4. third party actions over exclusion;
 - 5. where project involves residential construction, a residential construction exclusion; [or]
 - 6. where project involves use of an Exterior Insulation & Finish System (EFIS), an EFIS exclusion; [and]
 - 7. exclusion for work performed within the city of New York;

8. exclusion for the type of work to be performed as described in the permit(s) issued by the department.

[(F) contain the following endorsement: This policy shall not be cancelled, terminated, modified or changed in a way that affects the city by the issuing insurance company unless thirty (30) days prior written notice is sent to the Named Insured and the Commissioner of the New York City Department of Buildings, except that termination for non-payment may be made on only ten (10) days' written notice.]

§ 3. Subparagraph (ii) of paragraph (1) of subdivision (d) of section 101-08 of title 1 of the rules of the city of New York is amended to read as follows:

(ii) Table 1 (minimum per-occurrence and project-specific aggregate limits):

Criterion 1	Criterion 2 (Tower Crane Y/N)	Criterion 3 (Permit Type)	Criterion 4 (Proposed Height or Height of Tallest Adjacent Building)	Required Project Specific Coverage
1/2 Family Home AND Depth of Excavation < 12' AND Proposed Construction is not on a lot line with an existing structure AND Proposed Height < 35' [AND No Tower Crane]	[N/A]NO	Foundation and earthwork ¹ , New Building ¹ , Full Demo ¹ , or Major Alteration ^{1, 2}	[N/A]See Criterion 1	N/A, but comply with the requirements of (d)(1)(iv)
Not 1/2 Family Home OR Depth of Excavation > 12' OR Proposed Construction is on a lot line with an existing structure OR Proposed Height > 35'	NO	Foundation and earthwork ¹	Tallest Adjacent Building < 7 stories and < 75 feet	\$5 million
			Tallest Adjacent Building between 7-14 stories and < 150 feet OR Tallest Adjacent Building <= 14 stories and between 75-150 feet	\$10 million
			Tallest Adjacent Building > 14 stories or >=150 feet	\$15 million
		Full Demo ¹	Tallest Adjacent Building < 7 stories and < 75 feet	\$5 million
			Tallest Adjacent Building between 7-14 stories and < 150 feet OR Tallest Adjacent Building <= 14 stories and between 75-150 feet	\$15 million
			Tallest Adjacent Building > 14	\$25 million

			stories or ≥ 150 feet	
		New Building ¹ or Major Alteration ^{1, 2}	Proposed Number of Stories < 7 stories and < 75 feet AND Tallest Adjacent Building < 7 stories and < 75 feet	\$5 million
			Proposed Number of Stories between 7-14 stories and < 150 feet AND Tallest Adjacent Building ≤ 14 stories or < 150 feet OR Proposed Number of Stories ≤ 14 stories and between 75-150 feet AND Tallest Adjacent Building ≤ 14 stories or < 150 feet OR Tallest Adjacent Building between 7-14 stories and < 150 feet AND Proposed Number of Stories ≤ 14 stories or < 150 feet OR Tallest Adjacent Building ≤ 14 stories and between 75-150 feet AND Proposed Number of Stories ≤ 14 stories or < 150 feet	\$15 million
			Proposed Number of Stories $[\leq] \geq 14$ stories or ≥ 150 feet OR Tallest Adjacent Building > 14 stories or ≥ 150 feet	\$25 million
	YES		ALL Permits ¹	N/A
<u>Raising or moving a building</u>	<u>N/A</u>	<u>Alteration Type 1 or Type 2</u>	<u>N/A</u>	<u>\$2 million</u>
ALL OTHER PERMITS				N/A, but comply with the requirements of (d)(1)(iv)

¹ other than a storage shed, garage, or similar accessory use to a residential structure			
[² Major Alteration =]			
[1] Alteration permit involving demolition of more than 50% of the floor area of an existing building, or]			
[2] Work that will result in the removal of one or more floors of an existing structure, or]			
[3] Horizontal or vertical enlargement affecting the exterior envelope of an existing building]			

§ 4. Subparagraph (iv) of paragraph (1) of subdivision (d) of section 101-08 of title 1 of the rules of the city of New York is amended and new subparagraphs (v) and (vi) are added to read as follows:

(iv) With regard to all permits (or permit renewals) for which project-specific liability insurance is not required under Table 1 in subparagraph (ii) of this paragraph, [in advance of] prior to an application for the issuance (or renewal) of such permit, [permittee shall cause the city, together with its officials and employees, to be named an additional insured on] the permittee shall procure and maintain commercial general liability insurance[,] if [any,] required of the permittee as a licensee under section 104-02[, with regard to] for all operations performed pursuant to the permit. [The city's coverage shall be at least as broad as set forth in the most recent edition of ISO Forms CG 2012 or CG 2026.]

(v) With regard to the installation of sidewalk sheds and scaffolds, including those scaffolds for which notification to the department is required and a permit is not required, prior to an application for the issuance (or renewal) of a permit or the provision of notification, the installer shall procure and maintain commercial general liability insurance in the amount of one million dollars (\$1,000,000). Such insurance shall satisfy the requirements set forth in clauses (A) through (E) of subparagraph (i) of this paragraph.

(vi) With regard to the installation of supported scaffolds for which neither notification to the department nor a permit is required, the installer shall procure and maintain commercial general liability insurance in the amount of one million dollars (\$1,000,000). Such insurance shall satisfy the requirements set forth in clauses (A) through (E) of subparagraph (i) of this paragraph.

§ 5. Subdivision (g) of section 101-08 of title 1 of the rules of the city of New York is amended to read as follows:

(g) Proof of liability insurance. [For permits for which project-specific] When commercial general liability insurance is required under paragraph (1) of subdivision (d) of this section [(or for renewals of such permits), each applicant] the insured shall file with the department, at the time [it] the insured applies for [such] a permit (or permit renewal) or provides required

notification, a certificate of insurance relating to such insurance in a form prescribed by the department and a sworn statement from a licensed insurance broker in a form prescribed by the department.

§ 6. This rule shall take effect on October 1, 2014.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Amendment of Insurance Requirements for Permittees

REFERENCE NUMBER: 2013 RG 093

RULEMAKING AGENCY: Department of Buildings

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: July 7, 2014

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

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

RULE TITLE: Amendment of Insurance Requirements for Permittees

REFERENCE NUMBER: DOB-46

RULEMAKING AGENCY: Department of Buildings

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Sabrina Fong
Mayor's Office of Operations

7/18/2014
Date