

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) proposes to repeal Chapter 48 of Title 1 of the Rules of the City of New York relating to construction superintendents, and amend Chapter 3300 of Title 1 of the Rules of the City of New York by adding a new section 3301-02 in its place.

When and where is the hearing? DOB will hold a public hearing on the proposed rule. The public hearing will take place at 2pm on 3/31/16. 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 the DOB through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to dobrules@buildings.nyc.gov.
- **Mail.** You can mail comments to the New York City Department of Buildings, Office of the General Counsel, 280 Broadway, 7th floor, New York, NY 10007.
- **Fax.** You can fax comments to the New York City Department of Buildings, Office of the General Counsel, at 212-566-3843.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-393-2085. You can also sign up in the hearing room before the hearing begins on 3/31/16. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by 3/31/16.

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 or email at the addresses given above. You may also tell us by telephone at 212-393-2085. You must tell us by 3/24/16.

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, copies of all comments submitted online, copies of all written comments and a summary of oral comments concerning the proposed rule will be available to the public at the Office of the General Counsel.

What authorizes DOB to make this rule? Sections 643 and 1043(a) of the City Charter, and section 3301.3 of the New York City Building 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

This rule repeals Chapter 48 of Title 1 of the Rules of the City of New York relating to construction superintendents, and amends Chapter 3300 of Title 1 of the Rules of the City of New York by adding a new section 3301-02 in its place.

This rule promotes public safety by adding several requirements that the current rule does not cover and by requiring construction superintendents to supervise construction on a greater range of jobs.

The proposed rule changes the following aspects of the construction superintendent's role:

- **Jobs that require a construction superintendent:** The proposed rule expands the requirement for a construction superintendent to alterations, including alterations of 1-, 2-, and 3-family dwellings, which comprise at least one of the following:
 - vertical or horizontal enlargement;
 - alteration or demolition of more than fifty percent (50%) of the floor area;
 - the removal of one (1) or more floors; or
 - work that requires a special inspection for underpinning or the protection of sides of excavations.

The proposed rule also eliminates overlapping oversight requirements that exist between Chapter 48 and the New York City Construction Codes.

- **Designation of primary and alternate construction superintendents:** The proposed rule requires the permit holder to immediately notify the Department if the primary construction superintendent is permanently replaced. Further, the proposed rule requires the permit holder to notify the Department if an alternate construction superintendent serves in place of the primary construction superintendent for a period of two or more weeks. These processes mirror those applicable to site safety managers and coordinators.
- **Duties:** The proposed rule expands upon construction superintendents' duties by requiring that construction superintendents, among other duties, visit each job site for which they are responsible each day that active work occurs at the site; inspect every area where work is occurring at each job site during each visit in order to verify compliance with the approved construction documents and Chapter 33 of the New York City Building Code; and designate a competent person who is present at the site at all times work occurs.

- Log Requirements: While the current rule does not contain any log requirements, the proposed rule requires that construction superintendents maintain a detailed log of work that occurs at each job site for which they are responsible. The proposed rule details the items construction superintendents must record in this log. This will ensure that construction superintendents are actively involved in the work occurring at each job site.
- Qualifications: The proposed rule provides that construction superintendents are subject to the licensing provisions of Article 401 of Chapter 4 of Title 28 of the New York City Administrative Code. The proposed rule also makes several changes to the experience and credential requirements construction superintendents must satisfy.
- Renewal: While the current rule requires proof that the renewing construction superintendent has completed a seven-hour Site Safety Manager course approved by the Department, the proposed rule requires proof that the renewing construction superintendent has completed an eight-hour Site Safety Coordinator course approved by the Department. The proposed rule also provides that renewals are subject to the provisions of Article 401 of Chapter 4 of Title 28 of the New York City Administrative Code. This will allow the Department to hold construction superintendents to the same standards as licensees.
- Discipline: Under the proposed rule, construction superintendents are subject to the disciplinary provisions of section 28-401.19 of the New York City Administrative Code, including denial of issuance or renewal of construction superintendent registrations.

The Department of Buildings' authority for this rule is found in Section 643 and 1043(a) of the New York City Charter and section 3301.3 of the New York City Building Code.

New material 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. Chapter 48 of Title 1 of the Rules of the City of New York is hereby REPEALED.

§2. Chapter 3300 of Title 1 of the Rules of the City of New York is amended by adding a new Section 3301-02, to read as follows:

§3301-02 Construction Superintendents

(a) Definitions. For the purposes of this section, the following terms shall have the following meanings:

Accident. See Section 3302.1 of the New York City Building Code.

Approved construction documents. For the purpose of this section, approved construction documents will include any and all documents that set forth the location and entire nature and extent of the “work” proposed with sufficient clarity and detail to show that the proposed work conforms to the provisions of this code and other applicable laws and rules. Such documents will include but not be limited to shop drawings, specifications, manufacturer’s instructions and standards that have been accepted by the design professional of record or such other design professional retained by the owner for this purpose.

Commissioner. The Commissioner of the Department of Buildings, or his or her designee.

Competent person. See Section 3302.1 of the New York City Building Code.

Construction. See Section 3302.1 of the New York City Building Code.

Construction superintendent. An individual registered with the department and responsible for all duties as defined in this section.

Days. Calendar days, unless otherwise specified.

Demolition. See Section 3302.1 of the New York City Building Code.

Full demolition. See Section 3302.1 of the New York City Building Code.

Partial demolition. See Section 3302.1 of the New York City Building Code.

Department. The Department of Buildings.

Job. A design and construction/demolition undertaking consisting of work at one building or structure, as well as related site improvements and work on accessory structures. A job may consist of one or more plan/work applications, and may result in the issuance of one or more permits.

Permit holder. The individual who receives the primary Department-issued permit for the job.

Registered design professional. See Section 28-101.5 of the Administrative Code.

(b) Designation of construction superintendent.

(1) Jobs for which a construction superintendent is required. A construction superintendent is required for the following types of jobs:

(i) The construction of a new building;

(ii) The full demolition of an existing building;

(iii) An alteration to an existing building that involves one or more of the following:

(A) A vertical enlargement;

(B) A horizontal enlargement;

(C) The alteration or demolition of more than fifty percent (50%) of the floor area of the building during the course of work over any twelve (12) month period;

(D) The removal of one (1) or more floors during the course of work over any twelve (12) month period;

(E) Work that requires a special inspection for underpinning; or

(F) Work that requires a special inspection for the protection of sides of excavations.

(iv) Other jobs that pose an enhanced risk to the public and property, as determined by the commissioner.

Exceptions: Notwithstanding the above, a construction superintendent is not required for:

1. A job for which a site safety plan is required;
2. The construction of a new 1-, 2-, or 3-family building; or
3. A job for which the Department issued or renewed the primary alteration permit within three months of the effective date of this rule.

(2) Designation of a primary construction superintendent. For jobs requiring a construction superintendent, the permit holder must designate a primary construction superintendent, prior to the commencement of work, in a form and manner acceptable to the department.

(3) Change of designation. The permit holder must immediately notify the department, in a form and manner acceptable to the department, of any permanent change to the primary construction superintendent.

(4) Alternate construction superintendent. In the event the primary construction superintendent is temporarily unable to perform his or her duties, an alternate construction superintendent, designated by the permit holder and acceptable to and acting on behalf of the primary construction superintendent, must fulfill the duties of the primary construction superintendent. In the event that an alternate construction superintendent will be acting in place of the primary construction superintendent for a period longer than two consecutive weeks, the permit holder must notify the Department, in a form and manner acceptable to the Department, of such change.

(5) Limitations. An individual may only be designated as a primary or alternate construction superintendent for that number of jobs for which he or she can adequately

perform all required duties. No individual may be designated as the primary construction superintendent on more than ten (10) jobs.

(c) Duties of construction superintendent.

(1) Safe site. The construction superintendent must act in a reasonable and responsible manner to maintain a safe job site and assure compliance with Chapter 33 of the New York City Building Code and any rules promulgated thereunder at each job site for which the construction superintendent is responsible.

(2) Compliance with plans. To the extent that a registered design professional or special inspection agency is not responsible, the construction superintendent must assure compliance with the approved construction documents at each job site for which the construction superintendent is responsible.

(3) Administrative code duties. The construction superintendent must fulfill the duties of a superintendent of construction assigned by Chapter 1 of Title 28 of the New York City Administrative Code at each job site for which the construction superintendent is responsible.

(4) Daily visit. Beginning three months after the effective date of this rule, the construction superintendent must visit each job site for which the construction superintendent is responsible each day when active work is occurring.

Exceptions: The construction superintendent is not required to be present at the site during the following activities, provided no other work is in progress:

1. Surveying that does not involve the disturbance of material, structure, or earth;
2. Use of a hoist to transport personnel only;
3. Use of a material hoist that is fully enclosed within the perimeter of the building;
4. Finish trowelling of concrete floors;
5. When personnel are provided for temporary heat, light, or water; or
6. Truck deliveries to the site where the sidewalk is closed and the entrance gate is within that closed sidewalk area.

(5) Inspection. Each time the construction superintendent visits a job site for which he or she is responsible, the construction superintendent must inspect all areas and floors where construction or demolition work, and ancillary activity, is occurring, and:

(i) Verify work is being conducted in accordance with sound construction/demolition practices;

(ii) Verify compliance with the approved construction documents; and

(iii) Verify compliance with Chapter 33 of the Building Code and any rules promulgated thereunder.

(6) Correcting unsafe conditions. In the event the construction superintendent discovers work at a job site for which he or she is responsible that is not being conducted in accordance with sound construction/demolition practices, not in

compliance with approved construction documents, or not in compliance with Chapter 33 of the Building Code and any rules promulgated thereunder, the construction superintendent must immediately notify the person or persons responsible for creating the unsafe condition, order the person or persons to correct the unsafe condition, and take all appropriate action to ensure the unsafe condition is corrected. Where an unsafe condition relates to an item which a registered design professional or special inspection agency is responsible for implementing or verifying, the construction superintendent must also notify the responsible registered design professional or special inspection agency of the unsafe condition. All such unsafe conditions, notices, orders, and corrective work must be recorded in the log required by subdivision (d) of this section.

(7) Notification of conditions to the Department. The construction superintendent must immediately notify the Department, in a form and manner acceptable to the Department, when he or she discovers at any job site for which the construction superintendent is responsible any of the conditions listed in Section 3310.8.2.1 of the New York City Building Code. Notification to the Department does not relieve the construction superintendent of his or her obligations under paragraph (6) of this subdivision.

(8) Reporting of accidents and damage to adjoining property. The construction superintendent must immediately notify the Department, in a form and manner acceptable to the Department, of any accident at any job site for which the construction superintendent is responsible, or any damage to adjoining property caused by construction or demolition activity at the job site.

(9) Log. The construction superintendent must complete the log required by subdivision (d) of this section each time he or she visits a job site for which he or she is responsible.

(10) Competent person. The construction superintendent must designate a competent person for each job site for which the construction superintendent is responsible and ensure such competent person is present at the designated job site at all times active work occurs. The designation of a competent person does not alter or diminish any obligation imposed upon the construction superintendent. The competent person must carry out orders issued by the construction superintendent; be able to identify unsanitary, hazardous or dangerous conditions; take prompt corrective measures to eliminate such conditions; immediately report to the construction superintendent accidents at the job site or any damage to adjoining property caused by construction or demolition activity at the job site; and be able to effectively communicate workplace instructions and safety directions to all workers at the site.

(d) Log. The construction superintendent must maintain a log at each job site for which the construction superintendent is responsible. Such log must be made available to the commissioner upon request.

(1) Log contents. The log, at a minimum, must contain the following information:

(i) The presence of the construction superintendent at the job site as, evidenced by his or her printed name and signature and a notation indicating the times of arrival at, and departure from the site, which must be recorded

immediately after arriving at the site and immediately prior to leaving the site, respectively;

(ii) The general progress of work at the site, including a summary of that day's work activity;

(iii) The construction superintendent's activities at the site, including areas and floors inspected;

(iv) Any unsafe condition(s) observed per paragraph (6) of subdivision (c) of this section, and the time and location of such unsafe condition(s);

(v) Orders and notice given by the construction superintendent per paragraph (6) of subdivision (c) of this section, including the names of individuals issued orders or notices, any refusals to comply with orders or respond to notice given, follow up action taken by the construction superintendent, and where the violation is corrected, the nature of the correction;

(vi) Any violations, stop work orders, or summonses issued by the department, including date issued and date listed or dismissed;

(vii) Any accidents; and

(viii) The name of the competent person designated in accordance with paragraph (10) of subdivision (c) of this section, along with an accompanying signature of the competent person. If the construction superintendent assigns a new competent person, the date and time of this change, along with the name of the new competent person, must be recorded, accompanied by the signature of the new competent person. If the construction superintendent is not at the site when this occurs, the new competent person must instead make the log entry, which the construction superintendent must sign and date upon his or her next visit to the job site.

(2) **Completed.** The construction superintendent must complete the log prior to departing the job site.

(3) **Signed and dated.** The construction superintendent must sign and date each day's log entry.

(4) **Form and manner.** The log must be organized and recorded in a form and manner acceptable to the Department.

(e) **Registration of construction superintendents.** Construction superintendents must be registered with the Department, in accordance with the following provisions.

(1) **Form and manner of registration.** An application for registration as a construction superintendent must be submitted in a form and manner acceptable to Department, and provide such information as the department may require.

(2) Qualifications. All applicants for construction superintendent registration are subject to the provisions of Article 401 of Chapter 4 of Title 28 of the New York City Administrative Code and must submit satisfactory proof establishing that the applicant:

(i) Is able to read construction plans and specifications; and

(ii) Has satisfactorily completed, within two (2) years prior to the date of application, a course that is at least ten hours (10) in length and approved by the United States Department of Labor Occupational Safety and Health Administration (OSHA) in construction industry safety and health; and also meets one of the following:

(A) Is a registered design professional and has satisfactorily completed, within one (1) year prior to the date of the application, an 8-hour Site Safety Coordinator course approved by the department;

(B) Holds a Construction Health and Safety Technician (“CHST”) designation from the Board of Certified Safety Professionals (“BCSP”) and has satisfactorily completed, within one (1) year prior to the date of the application, an 8-hour Site Safety Coordinator course approved by the department;

(C) Has five (5) years of experience, within ten (10) years prior to the date of the application, as a building code enforcement official charged with enforcement of the provisions of the New York City Building Code, and has satisfactorily completed, within one (1) year prior to the date of the application, an 8-hour Site Safety Coordinator course approved by the department. The enforcement must have included inspections of buildings under construction or demolition and thus this basis for qualification excludes officials whose primary role is to perform inspections of occupied or vacant buildings;

(D) Has five (5) years of full time field experience in the United States, within 10 years prior to the date of the application, working on buildings as a safety official for a governmental entity or construction firm or as a safety manager or safety engineer for a safety consulting firm specializing in construction or demolition and has satisfactorily completed, within one (1) year prior to the date of the application, an 8-hour Site Safety Coordinator course approved by the department; or

(E) Has five (5) years of full time experience in the United States, within ten (10) years prior to the date of the application, as verified by employer affidavit, working with plans in a relevant construction trade in furtherance of the construction, vertical or horizontal enlargement, or full demolition of a building or structure, and has satisfactorily completed, within one (1) year prior to the date of the application, a 40-hour Site Safety Manager course approved by the department.

(3) Educational credit. For purposes of paragraph (2) of this subdivision, each year of full time formal training or education in a program with emphasis on construction at a college, technical or trade school may be substituted for one year of work experience, up

to a maximum of three years.

(4) Audits. Applications for registration are subject to audit at any time. An audit may also be made at any time upon receipt of complaints or evidence of falsification.

(5) Registration term. Registrations issued under this section are valid for three years from the date of issuance.

(6) Registration fees. The initial fee for registration in accordance with this section is one hundred dollars (\$100.00).

(7) Renewals.

(i) Renewals may be subject to the provisions of Article 401 of Chapter 4 of Title 28 of New York City Administrative Code. The fee for timely renewal is fifty dollars (\$50.00). Renewals not submitted in a timely manner will be subject to a late surcharge of fifty dollars (\$50.00).

(ii) Timely renewal applications must be accompanied by proof that the applicant has, during the one-year prior to renewal, successfully completed an 8-hour Site Safety Coordinator course approved by the department.

(iii) Renewals not filed within one year of registration expiration will be treated as a new application.

(8) Notification of change of address. Registered construction superintendents must notify the department, in writing, of any address change within thirty (30) days of the change.

(f) Disciplinary Actions. Construction superintendents are subject to the provisions of section 28-401.19 of the New York City Administrative Code.

(g) Cooperation required. Construction superintendents must comply with the provisions of section 28-401.20 of the New York City Administrative Code.

(h) Obligation of others. Nothing in this rule is intended to alter or diminish any obligation otherwise imposed by law on others, including but not limited to, the owner, permit holder, construction manager, general contractor, contractor, materialman, architect, engineer, land surveyor, or other party involved in a construction project to engage in sound engineering, design, and construction practices, and to act in a reasonable and responsible manner to maintain a safe job site.

**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: Regulation of Construction Superintendents

REFERENCE NUMBER: 2016 RG 018

RULEMAKING AGENCY: New York City 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: February 22, 2016

**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: Regulation of Construction Superintendents

REFERENCE NUMBER: DOB-78

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/ [Stephen Narloch]
Mayor's Office of Operations

[February 22, 2016]
Date