

NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the amendments to Section 101-03 regarding the reinspection fee, and Section 102-01 of Chapter 100 of Title 1 of the Rules of the City of New York, regarding correction and cure period for violations, and the addition of Section 102-06 to Chapter 100, regarding a program to give owners of one- and two-family homes who have not received any prior violations at the property within the past five years, or are new owners, an opportunity to correct certain violating conditions prior to receiving a notice of violation and associated penalties.

This rule was first published on May 28, 2021 and a public hearing thereon was held on June 28, 2021.

Dated: 7/7/2021
New York, New York

/s/
Melanie E. La Rocca
Commissioner

Statement of Basis and Purpose of Rule

Section 28-208.1 of the Administrative Code provides that the commissioner may issue a request for corrective action as an alternative to the issuance of an order or notice of violation. This rule adds a new Section 102-06 to Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York relating to a new program to give owners of one- and two-family homes who have not received any prior violations at the property within the past five years, or are new owners, an opportunity to correct certain violating conditions prior to receiving a notice of violation and associated penalties. The rule sets out eligibility and requirements for this program.

Section 28-208.1.1 of the Administrative Code allows the imposition of a fee for any subsequent inspection that results in the issuance of a notice of violation for the condition. The rule amends the existing reinspection fee in section 101-03 from \$85 to \$225. This fee has not been increased since it was adopted in 2011. The increased fee will cover the current workload and staffing needed to ensure compliance with code requirements.

The rule also amends section 102-01 by adding a timeframe for correction of violations, extending the cure period for violations from 40 to 60 days for one- and two-family homes, clarifying that the time starts from the date of service of the notice and deleting a redundant provision.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and sections 28-208.1 and 28-208.1.1 of the New York City Administrative 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. The fee for reinspection in section 101-03 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

Reinspection made necessary by a failure to correct a condition or respond to a request to correct that results in issuance of a violation	[\$85] <u>\$225</u> each inspection
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or other order	
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§2. Paragraphs (2) through (9) of subdivision (c) of section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York are renumbered (3) through (10), respectively, and a new paragraph (2) is added, to read as follows:

(2) Violations classified as major or lesser must be corrected within forty days from the date of service of the NOV, except that such violations issued to one- or two-family homes must be corrected within sixty days of service of the NOV.

§3. Paragraphs (3), (9) and (10) of subdivision (c) of section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York, as renumbered by this rule, are amended to read as follows:

(3) [The following violation] A violation for filing a false certification cannot be certified as corrected prior to a hearing before ECB. The respondent must appear at the hearing prior to the submission of the certification to the Department[:].

[(i) A violation for filing a false certification;]

(9) For violations classified as Class 3 or for those Class 2 violations eligible for a cure, respondents may avoid a hearing by submitting a certification of correction acceptable to and received by the Department no later than forty days from the date of [the Commissioner's order to correct set forth in] service of the NOV. For such violations issued to one- or two-family homes, a certificate of correction acceptable to the Department must be submitted and received no later than sixty days from the date of service of the NOV. For violations classified as Class 1, a certification acceptable to the Department must be received by the Department forthwith.

(10) Failure to submit an acceptable certification for all violating conditions indicated on the NOV on a Department of Buildings form within the time period prescribed in paragraph [(8)] (9) of this subdivision shall require the respondent to appear at a hearing at ECB on the date indicated on the NOV. If no certificate of correction is received within the time period prescribed in paragraph [(8)] (9) of this subdivision, the respondent is also subject to issuance of a violation

for failure to certify correction and the imposition of civil penalties as defined in [Title] section 28-202.1 of the Administrative Code.

§4. Paragraph (1) of subdivision (d) of section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows (unamended footnote omitted):

(1) Cure.¹ An eligible violation may be cured by correction before the first scheduled hearing date at ECB. All violations that are designated as Class 3 violations are eligible for cure. Some, but not all, types of violations that are designated as Class 2 violations are eligible for cure. Those types of Class 2 violations that are eligible for cure will be indicated within the Buildings Penalty Schedule found below. In order to cure, a certificate of correction acceptable to the Department must be filed at the Department within forty days from the date of [the Commissioner's order to correct set forth in] service of the NOV. For violations issued to one- or two-family homes, a certificate of correction acceptable to the Department must be submitted and received no later than sixty days from the date of service of the NOV. A cure constitutes an admission of the violation; dispenses with the need for a hearing at ECB; constitutes a predicate violation for subsequent violations; and, consistent with the provisions of § 28-204.2, and with the provisions of the Buildings Penalty Schedule, results in a zero penalty. A violation that has been charged as an Aggravated I or Aggravated II violation is never eligible for a cure, even if there is a "Yes" in the "Cure" column in the Buildings Penalty Schedule for that violation description.

§5. Paragraph (3) of subdivision (e) of section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York, relating to the deadline to receive a corrected certificate of correction, is REPEALED.

§6. Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new section 102-06 to read as follows:

§102-06 Homeowner resolution program. Owners of one- and two-family homes who have not received any prior violations at the property will have an opportunity to correct certain violating conditions prior to receiving a notice of violation and associated penalties.

(a) Applicability. The homeowner resolution program applies to owners of one- and two-family homes, whether or not they occupy those homes, to whom prior Department notices of violations have not been issued at the property within the past five years. The program shall also apply to new owners, where the violations on the property were issued within the past five years to a prior owner.

(b) Eligible violations. This program covers violations classified as Class 1, Class 2 or Class 3 in subdivision (k) of section 102-01 of these rules. Multiple violating conditions observed on the same date are considered as one violation for the purposes of this program.

Exceptions. This section does not apply to Class 1 violations for illegal conversions as described in section 28-210.1 of the Administrative Code and Class 1 violations that lead to death or serious injury.

(c) Request for corrective action. Where a violating condition is observed at a property that is part of this program, the commissioner will issue a request for corrective action, giving the owner 60 days to correct the condition.

(d) Failure to correct condition. If, upon reinspection at the expiration of the 60-day correction period, an inspection finds that the violating condition has not been corrected, a notice of violation will be issued to the owner.

(e) Fee. In addition to receiving a notice of violation, for Class 1 violations as described in subdivision (b), the owner will be charged a fee for the inspection that results in the issuance of such notice of violation, as provided in section 101-03 of these rules.

(f) Removal from program. An owner who receives a notice of violation after either failing to correct the violating condition within the provided timeframe or failing to provide access to an inspector to determine if the violating condition has been corrected is no longer eligible for this program and must comply with the requirements in section 102-01 of these rules. The violating condition must still be corrected and any applicable penalty associated with any such notice of violation issued must be paid.