

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 to add a new section 103-11 to Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York regarding penalties for failing to file required sprinkler reports.

Due to the current health emergency, the public hearing for this rule is being scheduled as a virtual hearing, which may be accessed according to the information given below in this Notice.

When and where is the hearing? DOB will hold a public hearing on the proposed rule online. The public hearing will take place at 11am on 10/5/21.

- Join through Internet:

To join the hearing via your browser either click on the following URL link or copy and paste it into your browser's address bar. Then follow the prompts. <https://buildings.webex.com/buildings/j.php?MTID=m808bf5454d24590dfe3dca9ee7d88937>

When prompted, enter the following meeting password: 10007

When joining the meeting choose either **“Use computer for audio”** or **“Call in”** for the audio portion of the public hearing. If you choose the “Call in” option, the information needed to connect (**phone number, Access Code and Attendee ID**) will automatically be presented to you immediately **after** you join the Webex meeting.

If you have low bandwidth or inconsistent Internet connection, we suggest you use the “Call-in” option for the hearing. This will reduce the possibility of dropped audio and stutters.

- Join via phone only:

To join the meeting only by phone, use the following information to connect:

Phone: 646-992-2010
Access code: 2308 171 2333
Password (if requested): 10007

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 website 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 by emailing dobrules@buildings.nyc.gov by 9/28/21 and including your name and affiliation. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit comments by 10/5/21.

What if I 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 can tell us by email at dobrules@buildings.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by 9/21/21.

This location has the following accessibility option(s) available: Simultaneous transcription for people who are hearing impaired, and audio only access for those who are visually impaired.

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/>.

What authorizes DOB to make this rule? Sections 643 and 1043(a) of the City Charter authorize DOB to make this proposed rule. This proposed rule was not included in DOB's regulatory agenda for this Fiscal Year because it was not contemplated when DOB published the agenda.

Where can I find DOB's rules? 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

Section 28-315.1 of the New York City Administrative Code states that buildings must comply with the retroactive requirements of the 1968 building code and that failure to comply with a retroactive requirement of the 1968 building code by the date specified for such compliance is a violation.

Section 27-929.1 of the New York City Administrative Code (the 1968 Code) requires certain buildings to have installed an automatic sprinkler system, and section 27-228.5(b) requires owners of such buildings to have submitted a report certifying such installation by July 1, 2019. Not all buildings have submitted such a report that was found acceptable by the Department. This

proposed rule sets out penalties for failure to file such report by 2022 and beyond, along with provisions for requesting a waiver of penalties.

The Department of Buildings' authority for this rule is found in sections 643 and 1043 of the New York City Charter and sections 27-228.5, 27-929.1 and 28-202.1 of the Administrative Code.

New material is underlined.

“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.

Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new section 103-11 to read as follows:

§103-11 Sprinkler reports.

(a) Sprinkler report required. Owners of buildings required to comply with the provisions of section 27-929.1 of the Administrative Code must file with the department a report prepared by an architect or an engineer, certifying the installation of the required sprinklers as required by subdivision (b) of section 27-228.5.

(b) Civil Penalties.

(1) Failure to file. An owner who fails to file an acceptable sprinkler report, indicating that sprinklers were installed as required by subdivision (b) of section 27-228.5 and section 27-929.1 of the Administrative Code, shall be liable for a civil penalty of five thousand dollars (\$5,000) per year beginning January 1, 2022 and ending on the filing date of an acceptable report.

(2) Late filing. In addition to the penalty for failure to file, an owner who submits a late filing shall be liable for a civil penalty of one thousand dollars (\$1,000.00) per month, beginning February 1, 2022 and ending on the filing date of an acceptable report.

(3) Challenge of civil penalty.

(i) An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision by providing proof of compliance. Examples of such proof include, but are not limited to, a copy of an acceptable report, or a certificate of occupancy indicating the building does not need to comply with the requirement to install sprinklers in accordance with section 27-929.1.

(ii) Challenges must be submitted in writing to the office/unit of the Department that issued the violation within thirty (30) days from the date of service of the

violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the Department.

(c) Full or partial penalty waivers; eligibility and evidentiary requirements. Owners may request a full or partial waiver of penalties assessed for violation of subdivision (b) of section 27-228.5 and section 27-929.1 of the Administrative Code. Requests must be made in writing and must meet eligibility and evidentiary requirements as follows:

(1) Owner status.

(i) A new owner requesting a waiver due to change in ownership must submit proof of a recorded deed evidencing transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department, and only in one of the following circumstances:

(A) A new owner of a property previously owned by a government entity requesting a waiver due to change in ownership must submit official documentation from the government entity affirming that the premises was entirely owned by the government entity during the period for which a waiver is requested.

(B) A new owner who receives a notice of violation for failure to comply with the requirements of subdivision (b) of section 27-228.5 and section 27-929.1 of the Administrative Code that was issued to the property after the transfer of ownership for a violation that occurred before the transfer must submit a recorded deed showing the date that the property was acquired or transferred. The waiver period shall extend from the date of the deed transfer to the date of the violation issuance.

(ii) An owner may be granted a waiver of penalties upon submission of a copy of an order signed by a bankruptcy court judge.

(iii) If a state of emergency is declared that prevents an owner from conducting an inspection, filing a report or correcting unsafe conditions, an owner may be granted a waiver of penalties.

(2) Building status. An owner requesting a waiver because the building was demolished must submit city or departmental records evidencing the demolition of the building prior to the filing deadline.

**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: Penalties for Failing to Report Installation of Automatic Sprinkler System

REFERENCE NUMBER: 2021 RG 040

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: August 25, 2021

**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: Penalties for Failing to Report Installation of Automatic Sprinkler System

REFERENCE NUMBER: DOB-140

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 a cure period would defeat the purpose of the violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

August 25, 2021
Date