

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 amend its rules to add fees for filing parking structure compliance reports and to add language regarding qualified parking structure inspectors. DOB is also proposing to add a new section regarding periodic inspections of parking structures. These changes are necessitated by new Article 323 that was added to Title 28 of the New York City Administrative Code by Local Law 126 of 2021.

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 2/25/22.

- 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=m5b80dd6218f13a5a317aead0875905b4>

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: 2305 692 2597

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 dobrates@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 dobrates@buildings.nyc.gov by 2/18/22 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 2/25/22.

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 dobrates@buildings.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by 2/11/22.

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/>. 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 and may be requested by email at dobrates@buildings.nyc.gov.

What authorizes DOB to make this rule? Sections 643 and 1043(a) of the City Charter and Article 323 of Title 28 of the City Administrative Code authorize DOB to make this proposed rule. The rule was included in the regulatory 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 of Proposed Rule

Local Law 126 of 2021 added a new Article 323 regarding periodic inspections of parking structures to Title 28 of the Administrative Code. Article 323 sets out requirements for a condition assessment of a parking structure that is to be conducted at periodic intervals as set forth by rule of the commissioner. This proposed rule sets out the timing and specific requirements for these inspections, as well as civil penalties for failure to file and late filing of reports, and for failing to correct conditions found during the inspections.

Section 101-03 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is proposed to be amended by adding fees for initial and amended/subsequent filings of the parking structure compliance reports, as well as for applications for extensions of time to complete any necessary repairs.

In addition, Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is proposed to be amended to add language regarding qualified parking structure inspectors and inspections.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and Article 323 of Title 28 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. Section 101-03 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding the following entry at the end of the table set forth in that section:

| | |
|--|--------------|
| <u>Parking structure compliance reports</u> | |
| • <u>Initial filing</u> | <u>\$305</u> |
| • <u>Amended/subsequent filing</u> | <u>\$85</u> |
| • <u>Application for extension of time to complete repairs</u> | <u>\$65</u> |

§2. Paragraphs (14) through (18) of subdivision (a) of section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York are renumbered (15) through (19), respectively, and a new paragraph (14) is added to read as follows:

(14) Qualified parking structure inspector. An engineer as defined in section 28-101.5 of the administrative code with three years of relevant experience with parking structures.

§3. Subdivision (c) of section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new paragraph (11) to read as follows:

(11) Parking structure inspections.

- (i) Inspection of a parking structure and appurtenances pursuant to section 28-323 of the Administrative Code must be performed by or under the direct supervision of a qualified parking structure inspector.
- (ii) The qualified parking structure inspector applicant must provide a detailed résumé indicating relevant work experience obtained in any US city or jurisdiction. When relevant experience is obtained while employed by another registered design professional who was signing and sealing such relevant work, a letter must be provided indicating length of the qualified parking structure inspector applicant's employment and his or her responsibilities.
- (iii) A qualified parking structure inspector applicant must demonstrate to the commissioner's satisfaction, including performance on any written or oral tests the commissioner may require, that he or she is sufficiently familiar with the Construction Codes, laws and rules pertaining to parking structures and engineering concepts related to parking structures.

§4. Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new section 103-13 to read as follows:

§ 103-13 Periodic Inspection of Parking Structures.

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

Acceptable report. A compliance report filed by a qualified parking structure inspector, as defined in section 101-07 of the rules of the Department, that meets the requirements of Article 323 of Title 28 of the Administrative Code and this rule as determined by the Department.

Amended report. A compliance report filed by a qualified parking structure inspector who certifies that the unsafe conditions reported in the initial report have been repaired and that no unsafe conditions exist at the parking structure.

Appurtenance. An element including, but not limited to, rolldown gates, attendant booths, lighting fixtures, gates, staircases, fire protection, column protection, signs, parapets, railings, guard rails, enclosures, antennae, bollards, vehicle barriers, vehicle impact protection, electric vehicle charging stations, and any other equipment attached to the parking structure. Appurtenance does not include mechanical devices for vehicles moving from and to street levels or within the structure such as parking machines, lifts, mechanical stackers, automated parking systems, and elevators in which public occupancy is prohibited.

Compliance Report. A report prepared by a qualified parking structure inspector summarizing the condition assessment of the subject parking structure and attesting to its accompanying classification.

Condition assessment. An examination conducted to review a parking structure and all parts thereof, as defined in Article 323 of title 28 of the Administrative Code, to determine whether the parking structure and all parts thereof are either safe, unsafe, or safe with repairs and/or engineering monitoring and whether, in the judgment of a qualified parking structure inspector, remedial work is required.

Filed report. A compliance report shall be deemed filed with the Department when it has been received by the Department. The filed report must be completed in accordance with the provisions of paragraph (3) of subdivision (c) of this section.

Filing window. The two-year period during which a compliance report for a particular parking structure may be filed without penalty.

Parking structure. A building or portion of a building used for the parking or storage of motor vehicles and an open or enclosed parking garage as defined in the New York City Building Code. A parking structure does not include an autobody repair shop, an automotive showroom, a garage with occupancy of fewer than three cars, unenclosed and unattached lots, an automotive service station, an automotive repair shop, or a private garage as such term is defined in the building code.

Physical Examination. Hands-on engineering inspection of parking structure systems and elements applying various methods of examination other than visual, including, but not limited to, sounding, probing or testing.

Qualified Parking Structure Inspector (hereinafter “QPSI”). A qualified parking structure inspector as defined in section 101-07 of the rules of the Department.

Report filing cycle. The six-year time interval established by the Commissioner for the filing of each successive compliance report for every parking structure subject to the requirements of Article 323 of Title 28 of the Administrative Code.

Safe condition. A condition of a parking structure, any appurtenances thereto or any part thereof not requiring repair or maintenance to sustain the structural integrity of the parking structure and that is to remain safe during the next six years.

Safe with repairs and/or engineering monitoring (hereinafter “SREM”). A condition of a parking structure, any appurtenances thereto or any part thereof that is safe at the time of inspection but requires repairs or maintenance during the next one to six years in order to prevent its deterioration into an unsafe condition during that six-year period.

Staggered filing cycle. The separate time intervals for filing compliance reports as determined by borough beginning January 1, 2022 and continuing thereafter for each subsequent report filing cycle.

Subsequent report. A compliance report that is filed by a QPSI after an acceptable report in order to change the status of the parking structure for that report filing cycle to reflect changed conditions or the recommended time frame for repairs of SREM or unsafe conditions.

Unsafe condition. A condition of a parking structure, any appurtenances thereto, or any part thereof that is hazardous to persons or property and requires repair within one year of completion of condition assessments. In addition, any condition that was reported as SREM in a previous compliance report and that is not corrected at the time of the current inspection must be reported as an unsafe condition.

(b) Responsibilities of qualified parking structure inspectors.

- (1) A QPSI must conduct condition assessments and file compliance reports in accordance with this section and Article 323 of Title 28 of the Administrative Code.
- (2) A QPSI must maintain records of inspections and tests for at least six years and must make such records available to the Department upon request.
- (3) A QPSI must maintain insurance coverage as set forth in paragraph (7) of subdivision (b) of section 101-07 of these rules. Copies of such insurance policies must be made available to the Department upon request.

(c) Condition Assessments.

- (1) *Periodic inspection requirements.* In order to maintain a parking structure and its appurtenances in a safe condition, and in accordance with Article 323 of Title 28 of the Administrative Code, a condition assessment of all components of a parking structure must be conducted at periodic intervals specified herein.

Exceptions: The façade of the structure does not need to be included in the parking structure compliance report if:

1. the building is subject to the Façade Inspection Safety Program (FISP) ; or
2. the parking structure occupies less than 50% of the total square footage of the building.

(2) *Inspection procedures.*

- (i) Before any parking structure is inspected, the QPSI retained by or on behalf of the owner of the building in which the parking structure is located must carefully review the most recent compliance report and any available previous reports, all annual observation checklists, as defined in section 28-323.2 of the Administrative Code, for the prior cycle, any available structural design or repair drawings, violations, and FISP reports where applicable.
- (ii) A condition assessment of a parking structure and appurtenances thereof pursuant to section 28-323.3 of the Administrative Code must be performed by or under the direct supervision of a QPSI retained by the owner of the building in which the parking structure is located or his or her representative.
- (iii) The QPSI must design a condition assessment program for the specific structure to be inspected, which must include, but not be limited to, inspection methods to be employed in the assessment. The program must be based on the considerations of the type of construction of the parking structure, age of the material components, the parking structure's specific exposure to environmental conditions and the presence of specific details and appurtenances. Consideration must be given to the structure's history of maintenance and repairs. Professional Engineers, individuals with a bachelor's degree in engineering and three years of relevant experience, or individuals with five years of relevant building experience,

working under the QPSI's direct supervision, may be delegated to perform selected inspection tasks other than the final inspection.

- (iv) The methods used to evaluate the parking structure in question must permit a complete physical examination of the structure, including, but not limited to, sounding, load tests, optical survey, non-invasive scanning, and cores. The QPSI must identify the most deleterious locations and perform physical examinations at those locations. Physical examinations as described in this rule must be performed on a minimum of 10% of each structural element including, but not limited to, beams, columns, and slabs.
- (v) The known history of the parking structure, the nature of the materials used, and the conditions observed will dictate the extent of the condition assessment. The QPSI must apply a professional standard of care to assess the structure's condition and the individual building systems that comprise the structure including, but not limited to, the building's structural components, waterproofing systems, fire proofing and fire stopping systems, and wearing surfaces. When the QPSI finds any deficiencies, he/she must ascertain the cause of these and any other possible building defects detected. The QPSI must order any special or additional inspections, probes, and/or tests, including sounding procedures, that may be required to support the condition assessment and to determine the causes of any defects.
- (vi) The QPSI must develop a unique annual observation checklist, as defined in 28-323.2 of the Administrative Code, during each condition assessment.
- (vii) Photographs must be taken, sketches made and/or any other methods of documentation utilized to properly document the location of all conditions observed during the course of the condition assessment, that are either unsafe or SREM.
- (viii) Upon discovery of any unsafe condition, the QPSI must immediately notify the Department and the owner of the building in which the parking structure is located. The QPSI must identify the location of any unsafe condition, advise the owner on the appropriate protective measures to be taken, and include the recommended type and location of public protection in the notification to the Department.
- (ix) Completion of a condition assessment means that the QPSI has conducted a final inspection to determine that the parking structure conditions as described in the compliance report are consistent with the actual conditions. Such final inspection must, at a minimum, include an actual visual assessment and a complete walkthrough of each level dedicated to parking with inspectorial equipment. A drive-by inspection is not acceptable.

(3) Report requirements.

- (i) The QPSI must file with the Department a written compliance report describing the result of the condition assessment, clearly documenting all conditions noted during the inspection, including the physical examination, and stating that the inspection was performed and completed in accordance with Article 323 of Title 28 of the Administrative Code and this rule. The QPSI must also submit a copy of the report to the owner of the building in which the parking structure is located.

- (ii) Technical information in the report must adhere to and follow the sequence and the labeling of the report requirements as listed in subparagraph (iii) of this paragraph and must be provided on such forms and in such format as the Department requires. Additional information may be provided. If a requirement is not applicable, this must be indicated on the report.
- (iii) The report must include an executive overview that consists of a summary of findings and recommendations, a concise statement of the scope of the inspection and findings, the conclusions and recommendations and a determination as to whether the parking structure is categorized as "safe," "SREM," or "unsafe." The report must also include, but not be limited to:
- (A) The address, any a.k.a. addresses, Block and Lot number, the Building Identification Number ("BIN"), the landmark status of the building in which the parking structure is located, and the location from the nearest cross street;
- (B) The name, mailing address and telephone number of the owner of the building in which the parking structure is located, or, if the owner is not an individual, the name, mailing address, telephone number, position/title of a principal of the owner;
- (C) A description of the building, including the total number of stories, the number of stories and/or locations occupied by the parking structure, plan dimensions, Certificate of Occupancy number if available, usage, and age and type of construction, specifying all materials present in the parking structure;
- (D) A description of the all components of the parking structure's gravity and lateral load carrying systems specific to the area being used as a parking structure or the entirety of the building if its sole use is as a parking structure. Where applicable, areas to be included are:
1. Ramps and other spaces used to access parking areas;
 2. In the case of a parking structure located at a floor or floors above floors of other occupancies, the slab and columns immediately below the lowest level of the parking structure;
 3. In the case of a parking structure located at a floor or floors below floors of other occupancies, the slab and beams/joists forming the ceiling of the topmost level of the parking structure;
 4. Any area outside of that described in 1, 2 and 3 that may exhibit deterioration extending from or caused by the structure comprising the parking area.
- (E) A detailed description of any distress, settlements, repairs, or revisions to the structure since the previous compliance report, including, but not limited to, deteriorated framing members, deteriorated joint material,

displacement, cracking, spalling of parking structure components, or other defects or changes;

(F) A detailed description of the procedures used in making the condition assessment;

(G) The following information:

1. The extent and location of all physical examinations performed;

2. The names, addresses, telephone numbers, and license or registration numbers for contractors and consultants involved in the condition assessment;

3. A location diagram of a discernable scale and with a north arrow, indicating the main entrance, locations of other entrances, and nearest cross street and locations and dates of physical examinations; and

4. Dates of the start and completion of the condition assessment.

(H) A description, classification, and mapping of each significant condition observed including deterioration and any movement detected and the apparent integrity of the joints and wearing surfaces. The description must also include a list of all appurtenances and their condition. Each condition must be classified as safe, unsafe or SREM. If the parking structure is classified as unsafe or SREM, the compliance report must include the locations and descriptions of all unsafe or SREM conditions. If unsafe conditions are noted, the report must recommend the type and location of public protection or clearly delineate the extent of areas that have been cordoned off and the methods used. Photographs must be labelled and the report must include key plans and locator drawings documenting these conditions. Guards and railings must be inspected to ensure that their components (balusters, intermediate railings and panel fillers) are positively secured against movement (e.g. by welds, bolts or screws). If any guard or railing is found not to be positively secured, the condition is classified as unsafe and must be made safe pursuant to the requirements of paragraph (5) of subdivision (c) of this section;

(I) An analysis of the causes of the conditions reported as unsafe or SREM;

(J) A detailed status report of maintenance work performed up to the date of submission of the report and the maintenance plan implemented for the parking structure;

(K) A blank annual observation checklist as described in section 28-323.2 of the Administrative Code prepared by the QPSI specifically for the parking structure in question

(L) Where a parking structure is categorized with a final rating SREM:

1. A plan detailing the proposed monitoring program;
 2. The name of the engineer performing the monitoring;
 3. A stability analysis of the parking structure that reports the required structural loading conditions and the calculated load carrying capacity of typical and worst case structural framing members which shows that the structure is stable under current and expected loading conditions; and
 4. It is to be explicitly stated if only repairs are required with no monitoring.
- (M) A comparison of currently observed conditions with conditions observed during the previous report filing cycle condition assessments, including the status of the repairs or maintenance performed with respect to the prior conditions. The following must be included and discussed:
1. Work permit numbers relating to parking structure repairs;
 2. Job numbers, status and sign-off dates for any parking structure repair related jobs, where applicable; and
 3. Violation numbers of any open Environmental Control Board (“ECB”) violations and the status of the repairs of the conditions cited in the ECB violations that are directly associated with the parking structure;
- (N) Recommendations for repairs or maintenance of SREM and unsafe conditions, including:
1. If a parking structure is categorized as SREM:
 - A. The recommended time frame for such repairs or maintenance to be performed, which must indicate the date by which the work must be performed (MM/DD/YYYY) to prevent the conditions from becoming unsafe and not the date on which work is planned or scheduled;
 - B. Time frames of less than one year, “ASAP,” or “immediately,” shall not be accepted.
 2. If a parking structure is categorized as unsafe:
 - A. The QPSI must provide a recommended time frame for repairs to be performed to bring the parking structure to SREM or safe status, and must indicate the date by which the work will be completed (MM/DD/YYYY);
 - B. Time frames of more than six years will not be accepted.

- (O) A list and description of the work permits required to accomplish the necessary work. If no work permits will be required, the reason must be indicated;
- (P) All photographs must be color, clearly legible, dated, and high resolution. Digital photos must be a minimum of 800 x 600 pixels. Photographs must be arranged into PDF uploads of no larger than 11" x 17". The following photos must be submitted:
1. Elevation photos. Color photographs of all entrances, the primary address and at least one view of each entire street front elevation.
 2. Representative photos of each parking level showing general conditions.
 3. Detailed condition photos. Color photographs of specific conditions must be clearly labeled and indicate the status designation. Detailed conditions must be located on the mapping of the parking structure required by item H of this subparagraph (iii).
 - A. All SREM and unsafe conditions must be catalogued.
 - B. If parking structure status is safe, submit a minimum of one representative photograph for each structural element and appurtenance.
- (Q) The classification of the parking structure for the current report filing cycle, as determined by the following guidelines:
1. If there are no unsafe conditions and no conditions that are SREM, then the parking structure shall be classified as safe;
 2. If there is at least one unsafe condition, then the parking structure must be classified as unsafe.
 3. If there is at least one condition that is SREM and there are no unsafe conditions, then the parking structure shall be classified as SREM. A compliance report may not be filed describing the same condition at the same location as SREM for two consecutive report filing cycles. The QPSI must certify that all of the conditions identified in the previous report as requiring repair have been corrected or the parking structure shall be classified as unsafe;
- (R) The seal and signature of the QPSI under whose direct supervision the condition assessment was performed.

(4) Report filing requirements.

- (i) The requirements of this rule apply to all parking structures. The Commissioner shall determine which additional buildings and/or parts thereof are required to file in accordance with this rule.
- (ii) Owners of buildings in which parking structures are located are required to file a compliance report at least once during each six-year report filing cycle established by the Department.
- (iii) An acceptable report must be filed within the applicable two-year filing window to avoid a late filing penalty.
- (iv) The report must be submitted to the Department along with a filing fee as specified in the rules of the Department.
- (v) Staggered filing cycle: Beginning January 1, 2022 an acceptable report for each parking structure to which this rule applies is due in accordance with the following filing windows:
 - (A) For parking structures located within the Borough of Manhattan Community Districts 1 through 7 an acceptable report must be filed within the two-year filing window starting January 1, 2022, and every sixth year thereafter.
 - (B) For parking structures located within all Community Districts in the Borough of Manhattan not listed in (A), above, and all Community Districts in the Borough of Brooklyn, an acceptable report must be filed within the two-year filing window starting January 1, 2024, and every sixth year thereafter.
 - (C) For parking structures located within all Community Districts in the Boroughs of Queens, the Bronx and Staten Island an acceptable report must be filed within the two-year filing window starting January 1, 2026, and every sixth year thereafter .

Exceptions:

- 1. Starting in Cycle 2, owners whose buildings have their most recent status as “No Report Filed” may file a report prior to the start of their designated filing window provided that all applicable civil penalties set out in subdivision (e) of this section are paid at the time of filing.
 - 2. If the building in which the parking structure is located is included in the FISP, the owner may choose to change the assigned filing cycle of the parking structure compliance report to a parking structure cycle that corresponds with the next FISP filing cycle so that both reports may be filed at the same time. This shall be the reassigned parking structure cycle. The owner must inform the Department 180 days prior to the end of the assigned parking structure filing window if this option is chosen. If an owner chooses this option, the owner must continue to file under the reassigned parking structure filing window.
- (vi) Initial compliance reports for new buildings in which parking structures that must comply with this rule are located must be filed as follows:

- (A) The report must be filed six years from the date the first Temporary Certificate of Occupancy, Interim Certificate of Occupancy or Certificate of Occupancy was issued, if that date falls within the applicable filing window as provided in subparagraph (v) of this paragraph; or
- (B) If six years from the date the first Temporary Certificate of Occupancy, Interim Certificate of Occupancy or Certificate of Occupancy was issued falls outside the applicable filing window as provided in subparagraph (v) of this paragraph, then the initial report must be filed within the applicable two-year filing window for the next six-year cycle.
- (vii) A report must be filed within 60 days of the date on which the QPSI completed the condition assessment (final inspection date), as described in subparagraph (ix) of paragraph (2) of subdivision (c) of this section. Failure to file a report within 60 days of the completed condition assessment requires a new condition assessment.
- (viii) If the report is not acceptable and is rejected by the Department, a revised report must be filed within 45 days of the date of the Department's rejection, after which the original file date will no longer be valid.
- (ix) If the report is not acceptable after two rejections, a new initial filing fee as specified in the rules of the Department is required.
- (x) Failure to submit a revised report addressing the Department's objections within one year of the initial filing requires a new condition assessment, including a new physical examination.
- (xi) A subsequent report indicating revised conditions may be filed within the six-year report filing cycle to change a parking structure's filing status or the recommended time frame for repairs of SREM or unsafe conditions for that cycle.

(5) Unsafe conditions.

- (i) Upon filing a report of an unsafe condition with the Department, the owner of the building in which the parking structure is located, his or her agent, or the person in charge of the building in which the parking structure is located must immediately commence such repairs or reinforcements and any other appropriate measures such as cordoning off areas that may be dangerous, erecting fences, sidewalk sheds and safety netting as may be required to secure the safety of the public and to make the building's structure and appurtenances conform to the provisions of the Administrative Code.
- (ii) All unsafe conditions must be corrected within 90 days from the submission of the compliance report.
- (iii) If, due to the scope of the repairs, the unsafe conditions cannot be corrected within the required 90 days, the QPSI must recommend a timeframe for repairs as noted in item (N) of subparagraph (iii) of paragraph (3) of subdivision (c). The owner of the building in which the parking structure is located is responsible for ensuring that the conditions described in the compliance report as unsafe are corrected and

all actions recommended by the QPSI are completed within this timeframe. The owner must notify the Department of any deviation from the timeframe to make corrections as specified in the QPSI's report. The subsequent report must include supporting documents from the QPSI justifying the request for a new time frame.

(iv) Within two weeks after repairs to correct the unsafe condition have been completed, the QPSI must inspect the premises. The QPSI must promptly file with the Department a detailed amended report stating the revised report status of the parking structure, along with a filing fee as specified in the rules of the Department and the owner must obtain permit sign-offs as appropriate. If the report is not acceptable and is rejected by the Department, a revised report must be filed within 45 days of the date of the Department's rejection after which the original filing date will no longer be valid. If the report is not acceptable after two rejections, a new amended filing fee as specified in the rules of the Department is required. Protective measures must remain in place until an amended report is accepted; however, the QPSI may request permission for the removal of the protective measures, shoring or any other public safety measures upon submission of a signed and sealed statement certifying that an inspection was conducted, the conditions were corrected, and the protective measures are no longer required.

(v) The Commissioner may grant extensions of up to 90 days to complete the repairs required to correct an unsafe condition upon receipt and review of an extension application submitted by the QPSI, together with:

(A) Notice that the premises have been secured for public safety by means of a fence or other appropriate measures as may be required;

(B) A copy of the contract indicating scope of work to correct unsafe conditions;

(C) The QPSI's estimate of length of time required for repairs;

(D) A statement of all applicable permit requirements;

(E) A fee as specified in the rules of the Department;

(F) An unforeseen delay or circumstance (e.g., weather, labor strike, fire) affecting the substantially completed work; and

(G) Progress photos showing current repairs.

Note: Financial considerations shall not be accepted as a reason for granting an extension.

(6) *Conditions that are safe with repairs and/or engineering monitoring (SREM).*

(i) The owner of the building in which the parking structure is located is responsible for ensuring that the conditions described in the compliance report as SREM are corrected and all actions recommended by the QPSI are completed within the time frame recommended by the QPSI, and are not left to deteriorate into unsafe conditions. It is the owner's responsibility to notify the Department of any deviation from the timeframe to make corrections as specified in the QPSI's report. The

subsequent report must include supporting documents from the QPSI justifying the request for a new time frame.

(ii) A report may not be filed describing the same condition and pertaining to the same location on the parking structure as SREM for two consecutive report filing cycles.

(iii) The QPSI must certify the correction of each condition reported as requiring repair in the previous report filing cycle, report conditions that were reported as SREM in the previous report filing cycle as unsafe if not corrected at the time of the current inspection, or report corrections that were made in the previous cycle as unsafe if they need further or repeated repair at the time of the current cycle.

(d) Annual observation. A building owner is responsible to have an annual observation performed in accordance with the provisions of section 28-323.4 of the Administrative Code. Such annual observation must be based on the checklist included in the most recent compliance report accepted by the Department and as described in section 28-323.2 of the Administrative Code.

(1) This checklist is to be completed annually by the owner or by a competent person on behalf of the owner each year after submission of the current cycle's report has been accepted and until the next cycle's report has been accepted.

(2) The completed checklists must be kept on site and be made available to the Department and the QPSI upon request.

(3) The person performing the annual observation shall notify the owner and the Department immediately upon discovering any conditions that may be hazardous to the public.

(e) Civil Penalties.

(1) Failure to file. An owner who fails to file the required acceptable compliance report shall be liable for a civil penalty of five thousand dollars (\$5,000) per year immediately after the end of the applicable filing window.

(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) per month, commencing on the day following the filing deadline of the applicable filing window period and ending on the filing date of an acceptable initial compliance report.

(3) Failure to correct unsafe conditions. In addition to the penalties provided in this section, an owner who fails to correct an unsafe condition within 90 days shall be liable for a civil penalty of one thousand dollars (\$1,000) per month until the unsafe condition is corrected, unless the Commissioner grants an extension of time to complete repairs pursuant to this section. This penalty shall be imposed until receipt of an acceptable amended compliance report by the Department indicating the unsafe conditions were corrected, or an extension of time is granted by the Commissioner.

(4) Failure to correct SREM conditions. An owner who fails to correct a SREM condition reported as requiring repair in the previous report filing cycle and subsequently files the condition as unsafe shall be liable for a civil penalty of two thousand dollars (\$2,000).

(5) 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. Such proof must include, but not be limited to, a copy of an acceptable initial compliance report, a copy of the acceptable amended report, copies of approved extension of time requests while work was/is in progress or written proof from a QPSI that the unsafe conditions observed at the parking structure were corrected and the violation was dismissed.
- (ii) Challenges must be made in writing within 30 days from the date of service of the violation by the Department and sent to the office/unit of the Department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the Department.

(f) Full or partial penalty waivers; eligibility and evidentiary requirements. Owners may request a full or partial waiver of penalties assessed for violation of Article 323 of Title 28 of the Administrative Code, and/or rules enforced by the Department. 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 this section or Article 323 of Title 28 of the Administrative Code that was issued to the property after the transfer of ownership must submit a recorded deed showing the date that the property was acquired or transferred. The waiver period shall be from the date of the deed 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 parking structure was demolished must submit city or departmental records evidencing the demolition of the parking structure prior to the filing deadline.

**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 Rules Governing Parking Structures

REFERENCE NUMBER: DOB-145

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 but late filing of the inspection reports is allowed within a prescribed timeframe.

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

January 15, 2022
Date

**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 Rules Governing Parking Structures

REFERENCE NUMBER: 21 RG 078

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: January 14, 2022