

## 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 Sections 102-01, 102-04, 103-01, 103-05 of Chapter 100 of Title 1 of the City of New York, regarding the implementation of the Mayor’s Executive Order 2 titled, “Small Business Forward: Review and Reform of Compliance Costs on Businesses.”

This rule was first published on August 19, 2022 and a public hearing thereon was held on September 19, 2022.

Dated: 10/13/22  
New York, New York

/s/  
Eric A. Ulrich  
Commissioner

## **Statement of Basis and Purpose**

The COVID-19 global pandemic caused financial instability for many small businesses in the City of New York. On January 4, 2022, in response to this crisis, the Mayor signed Executive Order 2 “Small Business Forward: Review and Reform of Compliance Costs on Businesses” (“EO2”). One goal of the reform was ensuring that small businesses face fewer unnecessary fines. EO2 called for the reform of existing violations and penalties issued by several city agencies.

The Department of Buildings was one of seven enforcement agencies which conducted a review of its existing violations that are most frequently enforced through the issuance of notices of violations, and to the extent practicable, identified those violations most frequently issued to small businesses that could be repealed or modified to reduce regulatory burdens, increase equity, and support small businesses. A total of 26 reforms for DOB were identified which required amendments to rules.

The specific proposed rules would (by relevant section):

### **Rule 102-01 – Enforcement of violations:**

- Extend the cure period for violations of the New York City Construction Codes, Electrical Code, Zoning Resolution and rules that are classified as Class 2 “Major” and Class 3 “Lesser” violations from 40 to 60 days from the date of service of a Notice of Violation.
- Eliminate the following violations:
  - “Approved Place of Assembly plans not available for inspection” (Class 2).
  - “Failure to conspicuously post electrical work permit while work is in progress” (Class 3).
  - “Place of Assembly contrary to Approved construction documents” (Class 2).
  - “Electrical closet not dedicated to electrical distribution equipment only” (Class 2 and 3).
  - “Failure to provide cover/faceplate/lampholder/luminaire canopy for electrical outlet” (Class 2).
- Reduce the penalties for the following violations:
  - “Electrical work without a permit” (Class 3).
  - “Work without a permit” (Class 3).
  - “Failure to post or properly post permit for work at premises” (Class 2).
  - “Change in occupancy/use of C of O as per §28-118.3.1 - §28-118.3.2 by operating a Place of Assembly as per when current C of O does not allow such occupancy” (Class 2).
  - “Luminaires and Lampholders not installed in an approved manner” (Class 2).

### **Rule 102-04 – Civil penalties for work without a permit:**

- Amend the grounds for waiver of civil penalties for work without a permit in subdivision (d) to specify that small businesses may receive a waiver of civil penalties for work without a permit after demonstrating, in a form and manner determined that by the Department, that it is a small business.

### **Rule 103-01 – Low-pressure boilers:**

- Add a definition for “small business” to subdivision (c).
- Amended the grounds for waiver of penalties in paragraph (6) of subdivision (f) to specify that a small business may be granted a first-time waiver of penalties for failure

to file an annual boiler inspection report.

Rule 103-05 – High-pressure boilers:

- Add a definition for “small business” to subdivision (c).
- Amend the grounds for waiver of penalties in paragraph (6) of subdivision (i) to specify that a small business may be granted a first-time waiver of penalties for failure to file an annual boiler inspection report.

DOB’s authority for this rule is found in Sections 643 and 1043(a) of the New York City Charter and Articles 105, 201, 213 and 303 of Title 28 of the Administrative Code of the City of New York.

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. Paragraphs (2) and (9) of subdivision (c) of section 102-01 of the rules of the City of New York are amended to read as follows:

(c) *Correction and certification of correction.*

- (2) Violations classified as major or lesser must be corrected within [forty] sixty 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].
- (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] sixty days from the date of 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.

§ 2. Paragraph (1) of subdivision (d) of section 102-01 of the rules of the City of New York is amended to read as follows:

(d) *Mitigated and zero penalties.* Mitigated or zero penalties are available in the following circumstances under the following conditions.

(1) *Cure.*<sup>1</sup> 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] sixty days from the date of 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 Section 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.

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<sup>1</sup> Section 28-204.2 of the Administrative Code provides for a zero penalty for Lesser violations that are corrected within the prescribed, or cure, period. For purposes of this rule, certain Major violations will also be treated as eligible for cure to the extent that section 28-202.1 of the Administrative Code specifies no minimum penalty for such violations.

§ 3. Penalties for violations of 27-528, 27-3018(b), 28-105.1, 28-105.11, 28-105.12.2, 28-118.3, EC 110.25, EC 314.25, and EC 410.30 as set forth in section 102-01 of Title 1 of the Rules of the City of New York are repealed or amended to read as follows:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default – Max Penalty
[27-528, BC 1024.1.3 (2008 code) & BC 1028.1.3 (2014 code)]	[Class 2]	[Approved Place of Assembly plans not available for inspection.]	[Yes]	[No]	[\$500]	[Yes]	[\$2,500]	[\$1,250]	[\$5,000]	[\$2,500]	[\$10,000]
27-3018(b)	Class 3	Electrical work without a permit.	Yes	Yes	[\$400] \$200	Yes	\$500	\$500	\$500	\$500	\$500
[27-3018(b)]	[Class 3]	[Failure to conspicuously post electrical work permit while work is in progress.]	[Yes]	[Yes]	[\$400]	[Yes]	[\$500]	[\$500]	[\$500]	[\$500]	[\$500]
28-105.1	Class 3	Work without a permit.	Yes	Yes	[\$500] \$250	Yes	\$500	\$500	\$500	\$500	\$500
28-105.11	Class 2	Failure to post or properly post permit for work at premises.	Yes	Yes	[\$625] \$300	Yes	[\$3,125] \$ 1,500	[\$1,563] \$750	[\$6,250] \$ 3,750	[\$3,125] \$1, 500	[\$10,000] \$7, 500
[28-105.12.2]	[Class 2]	[Place of Assembly contrary to Approved construction documents.]	[Yes]	[Yes]	[\$500]	[Yes]	[\$2,500]	[\$1,250]	[\$5,000]	[\$2,500]	[\$10,000]

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default – Max Penalty
28-118.3	Class 2	Change in occupancy/use of C of O as per §28-118.3.1 - §28-118.3.2 by operating a Place of Assembly as per when current C of O does not allow such occupancy.	Yes	No	[\$500] \$250	Yes	[\$2,500] \$1,250	[\$1,250] \$625	[\$5,000] \$3,125	[\$2,500] \$1,250	[\$10,000] \$6,250
[EC 110.25]	[Class 2]	[Electrical closet not dedicated to electrical distribution equipment only.]	[Yes]	[Yes]	[\$600]	[Yes]	[\$3,000]	[\$1,500]	[\$6,000]	[\$3,000]	[\$10,000]
[EC 110.25]	[Class 3]	[Electrical closet not dedicated to electrical distribution equipment only.]	[Yes]	[Yes]	[\$300]	[Yes]	[\$500]	[\$500]	[\$500]	[\$500]	[\$500]
[EC 314.25]	[Class 2]	[Failure to provide cover/faceplate/lampholder/luminaire canopy for electrical outlet.]	[Yes]	[Yes]	[\$500]	[Yes]	[\$2,500]	[\$1,250]	[\$5,000]	[\$2,500]	[\$10,000]
EC 410.30	Class 2	Luminaires and Lampholders not installed in an approved manner.	Yes	Yes	[\$500] \$250	Yes	[\$2,500] \$1,250	[\$1,250] \$625	[\$5,000] \$3,125	[\$2,500] \$1,250	[\$10,000] \$6,250

§ 4. Subdivision (d) of section 102-04 of subchapter B of Chapter 100 of Title 1 of the rules of the City of New York is amended by adding a new paragraph (10) to read as follows:

(10) Where an owner of a business that employs fewer than one hundred employees has been issued a violation for unpermitted work and such owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business.

§ 5. Paragraph 8 of subdivision (c) of section 103-01 of Title 1 of the rules of the City of New York is renumbered as paragraph (9), and a new paragraph (8) is added to read as follows:

(8) Small business. A business that employs fewer than one hundred persons.

§ 6. Subparagraph (i) of paragraph (f) of section 103-01 of Title 1 of the rules of the City of New York is amended by adding a new item (D), to read as follows:

(D) Small business. An owner of a small business may be granted a first-time waiver of penalties where the owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business.

§ 7. Paragraph 12 of subdivision (c) of section 103-05 of the rules of the City of New York is renumbered as paragraph (13), and a new paragraph (12) is added to read as follows:

(12) Small business. A business that employs fewer than one hundred persons.

§ 8. Subparagraph (i) of paragraph 6 of subdivision (i) of section 103-05 of the rules of the City of New York is amended by adding a new item (D), to read as follows:

(D) Small business. An owner of a small business may be granted a first-time waiver of penalties where the owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business.