

NEW YORK CITY DEPARTMENT OF BUILDINGS

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Department of Buildings (DOB) is proposing to amend section 102-04 of Title 1 of the Rules of the City of New York regarding waivers of a civil penalty.

- **When and where is the hearing?** DOB will hold a public hearing on the proposed rule online. The public hearing will take place at 12 p.m. on 7/6/23.
- Join through Internet – Desktop app:

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 to either continue using the browser or download/open the Teams desktop app.

<https://tinyurl.com/Buildings202307Waiver>

Enter your name when prompted and click the **“Join now”** button. If you don't have computer audio or prefer to phone in for audio, select **“Phone audio”** under **“Other join options”** then click the **“Join now”** button. You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins. If you are using phone audio then follow the dial-in instructions when prompted.

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

- Join through Internet - Smartphone app:

To join using the Microsoft Teams app on your smartphone, click on the following URL link from your phone to automatically open the Teams app. Note that the Microsoft Teams app must already be installed on your smartphone. It is available for free both in the Apple Store and Google Play.

<https://tinyurl.com/Buildings202307Waiver>

When prompted select “Join meeting”. Type your name and then select “Join meeting” again. You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins.

Alternatively, open the Teams app and select “Join a meeting”. Signing in with an account is not required. Type your name, the following Meeting ID and Passcode, then select “Join meeting”.

Meeting ID: 284 669 698 175

Passcode: wcuYn6 (Code is case sensitive)

- Join via phone only:

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

Phone: 646-893-7101

Phone Conference ID: 559 002 616#

You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins.

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 6/29/23 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 7/6/23.

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 6/22/23.

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 dobrules@buildings.nyc.gov.

What authorizes DOB to make this rule? Sections 643, 645 and 1043(a) of the City Charter and Article 213 of Chapter 2 of Title 28 of the New York City Administrative 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 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 promulgating 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

Section 102-04 of Title 1 of the Rules of the City of New York is amended to remove the civil penalty waiver provision for sidewalk sheds with expired permits. This amendment makes clear that civil penalties will be assessed for keeping a sidewalk shed up after the expiration of a valid permit. Pursuant to section 28-213.3 of the Administrative Code, before any sidewalk shed permit is issued or renewed, any penalty issued for maintaining a sidewalk shed after the permit has expired will have to be paid.

The Department expects that the threat of or actual issuance of violations for sheds with expired permits will result in more such sheds being dismantled and removed from City streets while still maintaining the necessary public protection.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and Article 213 of Chapter 2 of Title 28 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

Paragraphs (5) and (10) of subdivision (d) of section 102-04 of subchapter B of chapter 100 of Title 1 of the Rules of the City of New York are amended to read as follows:

(d) *Waiver of civil penalty for work without a permit.* Notwithstanding any penalty waiver, a permit must be obtained for the unpermitted work. The Department may waive a civil penalty for work without a permit in the following instances:

(5) Where a fence, [shed or] scaffold [(or other temporary construction equipment)], excluding sidewalk sheds, was installed with a valid permit and the permit has expired.

(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, except that such waiver does not apply to a sidewalk shed that was installed without a permit or installed with a valid permit and the permit has expired.

**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 Civil Penalty Waiver Rules

REFERENCE NUMBER: DOB-161

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/ Francisco X. Navarro
Mayor's Office of Operations

May 18, 2023
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 Civil Penalty Waiver Rules

REFERENCE NUMBER: 2023 RG 020

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
Senior Counsel

Date: May 18, 2023