

## 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 rule regarding penalties incurred due to failure to file an affirmation of correction for elevators.

**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 3/13/24.

- **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.

<http://tinyurl.com/PenElevAffirmamend2024>

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.

<http://tinyurl.com/PenElevAffirmamend2024>

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: 222 674 909 268

Passcode: fkhrXg (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: 650 205 747#

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](mailto: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](mailto:dobrules@buildings.nyc.gov) by 3/6/24 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 3/13/24.

**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](mailto:dobrules@buildings.nyc.gov). Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by 2/28/24.

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](mailto:dobrules@buildings.nyc.gov).

**What authorizes DOB to make this rule?** Sections 643 and 1043(a) of the City Charter and Article 304 of Title 28 of the New York City Administrative Code 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 of Proposed Rule**

The Department of Buildings (“the Department”) is amending paragraph (3) of subdivision (h) and paragraph (3) of subdivision (i) of section 103-02 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York to allow building owners to have more time to adjust to the timelines and requirements to file elevator affirmations of correction that went into effect on January 15, 2022.

Local Law No. 126 of 2021 (“LL 126”) amended § 28-304.6 of the NYC Administrative Code (“AC § 28-304.6”), which sets forth the process and timeframe for required annual elevator category tests and periodic inspections, to shorten the filing window during which any defects found had to be corrected and an affirmation of correction could be accepted before it would be considered late. Prior to LL 126, which went into effect in January of 2022, defects had to be corrected within 120 days of the date of the test or inspection and an affirmation of correction stating that all found and reported defects were corrected had to be filed with the department within 60 days of correction of the defect. LL 126 shortened those timeframes to 90 days to correct the defects and 14 days after correction to file the affirmation of correction.

1 RCNY 103-02 (“Rule 103-02”) was amended to shorten the filing window for affirmations of correction to match the timeframes set forth in AC § 28-304.6, as well as to change the timeframe for the imposition of penalties for late filing of affirmations of correction and failure to file affirmations of correction. Prior to those rule amendments, which went into effect in January of 2022, owners had 12 months to file their inspection and test reports and their affirmations of correction before they were deemed to have failed to file. The 2022 amendment to Rule 103-02 shortened the timeframe from 12 months to 14 days after the correction is made for owners to file their affirmation of correction and avoid this penalty.

Rule 103-02 establishes two civil penalties for failing to file an affirmation of correction on time: one for an untimely filing of an affirmation of correction and one for failure to file an affirmation of correction. The penalty for untimely filing of an affirmation of correction is a monthly late penalty. The penalty for failure to file an affirmation of correction by a certain date is a one-time penalty.

As noted above, to allow building owners to have more time to adjust to the timelines and requirements to file elevator affirmations of correction that went into effect on January 15, 2022, Rule 103-02 is now being amended to specify that penalties for failure to file an affirmation of correction will not be assessed for affirmations due with respect to defects identified during the 2022 and 2023 inspection and test cycles for owners who submitted affirmations of correction by April 14, 2023 for conditions discovered during the 2022 cycle or by April 14, 2024 for conditions discovered during the 2023 cycle. This is being done to give owners more time to adjust to the new filing and penalty timelines. Penalties for late filings would still apply. The existing timeframes for filing reports and affirmations of correction apply beginning with the 2024 inspection and test cycles.

The Department of Buildings’ authority for these rules is found in sections 643 and 1043 of the New York City Charter and Article 304 of Title 28 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (\*\*\*) indicate unamended text.

“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. Paragraph (3) of subdivision (h) of section 103-02 of subchapter C of chapter 100 of Title 1 of the Rules of New York is amended to read as follows:

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(3) Failure to file the affirmation of correction. An owner who fails to correct the defects within the applicable time after the test and to file the affirmation of correction by the date the affirmation was due, stating that all defects found and indicated on the test report have been corrected pursuant to Section 28-304.6.6 of the Administrative Code and subdivision (e) of this section, shall be liable for a civil penalty of one thousand dollars (\$1000.00) per elevator, except that this penalty will not be imposed for affirmations due with respect to defects identified during the 2022 and 2023 test cycles, provided that such affirmations were submitted by April 14, 2023 or April 14, 2024, respectively.

§2. Paragraph (3) of subdivision (i) of section 103-02 of subchapter C of chapter 100 of Title 1 of the Rules of New York is amended to read as follows:

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(3) Failure to file the affirmation of correction. An owner who fails to correct the defects within the applicable time after the inspection and test and to file the affirmation of correction by the date the affirmation was due, stating that all defects found during the inspection and test and indicated on the report have been corrected pursuant to Section 28-304.6.6 of the Administrative Code and subdivision (e) of this section, shall be liable for a civil penalty of three thousand dollars (\$3000.00) per elevator, except that this penalty will not be imposed for affirmations due with respect to defects identified during the 2022 and 2023 inspection and test cycles, provided that such affirmations were submitted by April 14, 2023 or April 14, 2024, respectively.

**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 Penalties related to an Elevator Affirmation of Correction due for 2022 and 2023**

**REFERENCE NUMBER: 2024 RG 003**

**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: January 31, 2024

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Penalties related to an Elevator Affirmation of Correction due for 2022 and 2023**

**REFERENCE NUMBER: DOB-176**

**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 the rule's purpose is to suspend penalties for 2022 and 2023. It does not propose any penalties.

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

January 31, 2024  
Date