

NEW YORK CITY DEPARTMENT OF BUILDINGS

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 section 3606-01 of Chapter 3600 of Title 1 of the Rules of the City of New York regarding the determination of the market value of alterations of buildings in special flood hazard areas. This rule was first published on October 30, 2025, and a public hearing thereon was held on December 1, 2025.

Dated: 2/11/2026
New York, New York



Ahmed Tigani
Commissioner

STATEMENT OF BASIS AND PURPOSE OF RULE

The purpose of the amendments to Section 3606-01 of Chapter 3600 of Title 1 of the Rules of the City of New York is to codify the current process by which the Department of Buildings, as the flood plain administrator and as required by BC G103.1, determines whether a structure located in a special flood hazard area has sustained substantial damage following a natural disaster and to establish a clear notice and appeals procedure for property owners.

The Department, in its capacity as the floodplain administrator for the city of New York, is authorized to make substantial damage determinations following a natural disaster and currently performs these assessments as part of its regulatory responsibilities. This amendment codifies the current procedure for issuing such determinations and provides a process for notifying property owners and allowing them to appeal a determination that a structure has sustained substantial damage.

Additionally, the amendments clarify that any repairs performed on structures deemed substantially damaged constitute substantial improvements, as defined in Section BC 202. This ensures consistency in the application of substantial improvement standards and aligns with federal and local floodplain management requirements. Property owners and design professionals must acknowledge these determinations when submitting applications for alterations, ensuring that all work is reviewed by the Department in accordance with applicable flood protection standards.

These amendments clarify obligations by formally outlining the steps involved in determining substantial damage and the subsequent requirements for substantial improvements. By establishing a transparent application and review process, the rule ensures that affected property owners know their obligations and can appeal a determination when necessary.

Furthermore, the amendments strengthen the City's ability to manage flood risks by formalizing the process through which the Department applies federal floodplain management standards under the National Flood Insurance Program (NFIP) at the local level. The NFIP requires participating communities to determine when structures have sustained "substantial damage" as defined in 44 C.F.R. § 59.1 and to ensure that any subsequent repairs meet the flood protection requirements set forth in 44 C.F.R. § 60.3. The amendments align the Department's procedures with those NFIP requirements by establishing a clear administrative process for making and issuing substantial damage determinations, providing notice to property owners, and setting forth an appeal mechanism. They also reinforce the requirement that repairs made to structures determined to be substantially damaged must comply with the flood-resilience provisions of the NYC Building Code, including elevation, floodproofing, and other protective measures applicable to new or substantially improved buildings in flood hazard areas. Aligning local procedures with NFIP standards ensures that the City's determinations are consistent with federal definitions and enforcement requirements, thereby maintaining program compliance and supporting flood-risk reduction objectives.

By providing a structured framework for substantial damage assessments, this revision supports the City's long-term flood mitigation efforts, enhances public awareness of flood risk regulations, and helps ensure the resilience of New York City's built environment in the face of increasing climate-related challenges.

In response to comments received prior to and at the public hearing, the following changes have been made:

- Clarified that the Department's determination of substantial damage described in this rule amendment would occur after an assessment following a natural disaster.
- Added that the notice of substantial damage will be posted on the property where physically possible.
- Clarified that emergency work is the only work authorized to be performed on a substantially damaged building pursuant to subdivision (j) of 1 RCNY §3606-01.
- Added that the owner may appeal to the Board of Standards and Appeals if the appeal to the Department is denied.
- Added an alternative methodology to appeal a substantial damage determination that allows an equivalent well-documented alternative so the owner is not forced to use the substantial damage estimator ("SDE") when it does not fit their circumstances.
- Clarified that an appraisal can be submitted as part of the appeal, which was always allowed.

In addition, comments were received for which changes were not made for the following reasons:

- There was a suggestion that the consequences of not appealing a Department determination within 2 years, *i.e.*, that the decision is final and binding, be explicitly stated. The Department makes many determinations that have a time limit for appeal with the implication that they become final if not appealed; therefore such a statement is unnecessary.
- A comment was received that the use of "form and manner" for appeals is confusing and assumes that "manner" means within 24 months as set out in the rule. However, "manner" is intended to encompass the method of filing – whether electronic or some other way – and is, therefore, not covered by the stated timeframe.
- A comment was received complaining that property owners are paying too much for property insurance. This is not in the Department's purview.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and section 28-104.7.11 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (***) indicate unamended text.

Section 1. Subdivisions (a), (b) and (c) of Section 3606-01 of Chapter 3600 of Title 1 of the Rules of the City of New York are amended to read as follows:

§3606-01 Alteration applications; determinations of market value and substantial improvement.

(a) Scope. This rule provides application submission requirements for alterations to structures located in areas of special flood hazard, provides the method for determining the market value of a structure, and provides the method for determining whether repairs, reconstructions, rehabilitations, additions or improvements constitute a substantial improvement. In its capacity as floodplain administrator for the city of New York, the department is authorized to deem a structure substantially damaged. Any repairs performed on such structures are considered substantial improvements as defined in Section BC [G201.2] 202. This rule establishes the notice procedure for a department-issued determination of substantial damage and the process to appeal such determination.

(b) References. See Section BC [G201.2] 202 (definitions of market value of structure, substantial damage, and substantial improvement) and Section 28-104.7.11.

(c) Applicant's statement. Applicants ~~[shall]~~must include in every alteration application the statement: "Work proposed in this application (is/is not) included in a substantial improvement as defined by Section BC [G201.2] 202 and 1 RCNY 3606-01."

§2. Subdivision (f) of Section 3606-01 of Chapter 3600 of Title 1 of the Rules of the City of New York is amended to read as follows:

(f) Determination of substantial improvement. Work ~~[shall]~~will be deemed a substantial improvement if the cost as calculated in paragraph (e) equals or exceeds 50% of the market value of a structure as calculated in paragraph (d). A substantial improvement ~~[shall]~~ also ~~[include]~~ includes work performed to a structure that has sustained substantial damage, as such term is defined in Section BC [G201.2] 202. In determining whether a structure has sustained substantial damage, the market value ~~[shall]~~must be calculated in accordance with paragraph (d) of this rule.

§3. Section 3606-01 of Chapter 3600 of Title 1 of the Rules of the City of New York is amended by adding new subdivisions (i) and (j) to read as follows:

(i) Notice of a department-issued substantial damage determination. Where the department determines that a building or structure is substantially damaged after a department assessment performed following a natural disaster, the department will send a notice by regular mail to the owner of the property at which the substantial damage occurred and will post such notice on the property, where physically possible. The notice will indicate the procedure to challenge the determination and the bases for such challenge.

(j) Appeal of a department-issued substantial damage determination. An appeal of a department-issued substantial damage determination must be submitted in accordance with the timeframe and submission requirements of this section. No work may be performed on a

building deemed by the department as substantially damaged, except emergency work in accordance with items 1-3 and 5 of section 28-105.4.1 or Article 215 of the Administrative Code or section BC G102.1, item (8), until the department has made a determination regarding the appeal. Where the department has granted an appeal, the applicable provisions of BC G102.1 for a non-substantial improvement will apply to work on such building. Where an appeal is denied, the applicant may file for a variance at the Board of Standards and Appeals in accordance with section BC G105.1 or file an appeal of the department's determination to the Board in accordance with section 28-103.4 of the Administrative Code.

- (1) Where an appeal is sought in connection with a one- or two- family dwelling, such appeal must be prepared and submitted by one of the following:
- (i) a home improvement contractor registered or licensed by the department of Consumer and Worker Protection;
 - (ii) a Certified Floodplain Manager; or
 - (iii) a registered design professional.
- Appeals sought in connection with a building other than a one- or two-family home must be prepared and submitted by a registered design professional.

- (2) Appeals must be prepared using either
- (i) the latest version of the substantial damage estimator (SDE) issued by the Federal Emergency Management Agency ("FEMA") and include an Individual Structure Detailed Report prepared in accordance with FEMA P-784, Substantial Damage Estimator User Manual and Field Workbook and the requirements of FEMA P-758, Substantial Improvement Substantial Damage Desk Reference, or
 - (ii) an alternative, methodology acceptable to the department that provides documentation and calculations sufficient to verify the pre-damage market value of the structure as well as the cost to restore the structure to pre-damage condition, which may include an appraisal of the structure prepared in accordance with paragraph (2) of subdivision (d) of this section, in order to determine whether the structure meets the definition of substantial damage in section 202 of the Building Code.

- (3) Any alternative methodology must include at a minimum:
- (i) an itemized repair cost breakdown,
 - (ii) the basis for any pricing assumptions,
 - (iii) pictures documenting the condition of each room, space or portion of the building subject to flooding or other type of damage and
 - (iv) any other reports specified by the department.

- (4) Appeals must be submitted on forms provided by the department, within 24 months of the date of a department-issued substantial damage determination. The department is authorized to grant one 12-month extension upon a finding of reasonable cause, provided an application for extension is submitted prior to the expiration of the 24-month appeals period.

- (5) Appeals must be submitted in a form and manner established by the department and include signatures from the building owner and preparer of the appeal. The preparer submitting the appeal must sign an attestation on forms provided by the department confirming the accuracy of such application. The falsification of an appeal by a preparer may result in disciplinary action against the preparer including but not limited to prohibiting future dealings with the agency.