

## New York City Department of Transportation

### Notice of Adoption

**NOTICE OF ADOPTION** relating to amendments of the New York City Department of Transportation's (DOT) "Highway Rules" contained in Chapter 2 and "Penalty Schedule" contained in Chapter 3 of Title 34 of the Rules of the City of New York to clarify existing requirements and increase the associated penalties for violations of the existing requirements, and to establish new requirements and penalties for violations of new requirements.

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN** the Commissioner of the New York City Department of Transportation (DOT) by Section 2903(b) of the New York City Charter and in accordance with the requirements of Section 1043 of the New York City Charter that DOT hereby amends Chapters 2 and 3 of Title 34 of the Rules of the City of New York.

This rule was first published in the City Record on February 6, 2026, and a public hearing was held on March 9, 2026. DOT carefully reviewed the verbal and written comments that were submitted in response to the proposed rule. The majority of public comments expressed opposition to clarifying the procedures permittees are required to follow once an underlying emergency is eliminated and the site has been made safe, including the prohibition against installing backfill, base, or wearing course under an emergency permit number. Other comments raised concerns that the proposed rule may adversely impact restoration operations, including imposing new permit requirements during periods such as the Holiday embargo and increasing the number of roadway plates remaining in the street.

In consideration of the comments received, DOT conducted an internal review of the proposed rule. Based on that review, DOT has determined not to proceed at this time with the proposed amendment to Section 2-11(g)(2)(ii) concerning emergency permit procedures. This determination is intended to provide stakeholders with additional time to become familiar with the procedural requirements applicable when work is performed under an emergency permit, particularly after the underlying emergency has been eliminated.

With respect to the remaining comments, DOT acknowledges the concerns expressed. However, DOT has concluded that the proposed amendments provide necessary clarification to promote safe and efficient restoration operations and consistent administration of the permit process. Accordingly, other than the removal of the proposed amendment to Section 2-11(g)(2)(ii), no changes have been made to the proposed rule.

## **Statement of Basis and Purpose of Adopted Rule**

The purpose of the adopted rule is to update sections 2-01, 2-02, 2-05, 2-07, 2-08, 2-11, and 2-14 of the Highway Rules to provide simpler language, clarify existing requirements, and establish new requirements. Additionally, the adopted rule revises the Penalty Schedule to significantly increase existing penalty amounts as well as establish new penalty amounts for inspection requirements that range from \$750 to \$5,000. Specifically, the amendments are as follows:

- Section 2-01 is amended to clarify the definitions for “Embargo period” and “Emergency work,” and to add a new definition for “Holiday embargo” that specifies an annual timeframe for the suspension of non-emergency work.
- Section 2-02(g)(4) is amended to delete an existing DOT requirement for underground facility owners from the “Permits” section of the Highway Rules. Such requirement will be incorporated into Section 2-07(a) which specifies general conditions for underground street access covers, transformer vault covers and gratings. This change will clarify that a permit is not a prerequisite for DOT to assign responsibility to an underground facility owner for surface defects caused by their facility underneath the roadway.
- A new Section 2-02(o) is added to codify the requirement to comply with the Highway Rules, the Standard Specifications, the Standard Detail Drawings, and all other applicable laws or rules. This change will replace Section 2-11(e)(16)(iii) and clarify that DOT’s compliance requirement is generally applicable irrespective of the type of work performed.
- A new Section 2-02 (p) is added to codify DOT’s prohibition against tampering or falsely altering a permit issued by the Department and identify potential consequences for such conduct. This addition is designed to deter an applicant and/or permittee from performing a prohibited act.
- Section 2-05(d)(3) is amended to delete the parenthetical example of alternate terms for CONEX boxes and replace the word “containers” with “boxes” to align with newly added Section 2-14(g)(2) which is referred to therein.
- A new Section 2-07(a)(9) is added to incorporate an existing DOT requirement for underground facility owners that was previously codified in Section 2-02(g)(4). This amendment will also clarify that Department-approved testing mechanisms may be used to substantiate liability for surface defects.
- Sections 2-07(a)(8), 2-11(e)(4)(v), and 2-11(g)(2)(xiii) are amended to clarify when flagpeople are required to be placed at a job site in reference to bicycle traffic regulations. This change will promote safety for bicyclists.
- Section 2-07(b)(2) is amended to add concrete pad for clarification that any defective street condition within an area extending twelve inches outward from a concrete pad’s perimeter is also required to be repaired.
- Section 2-11(e)(10) is amended by adding and clarifying several requirements regarding plating and decking, including winter moratorium and Holiday

embargo directives. Additionally, an annual timeframe for DOT's winter moratorium period is defined. This amendment is designed to address public complaints about plating and decking.

- Sections 2-11(e)(12)(vi) and (vii) are amended to add an exception to the requirement to restore in kind as to material type, color, finish or distinctive design. This change will accurately reflect current DOT practice regarding restoration.
- Section 2-11(e)(16)(iii) is amended to delete a general compliance requirement from the "Excavation and Restoration Requirements" section of the Highway Rules. Such requirement is to be incorporated into newly added Section 2-02(o). This change will clarify that the requirement to comply with the Highway Rules, the Standard Specifications, the Standard Detail Drawings, and all other laws is applicable to all applicants, permittees, and persons conducting business with the Department irrespective of whether excavation is performed.
- Section 2-11(g)(3) is amended to reflect current DOT practice regarding applying for an emergency permit number. This change allows a permittee to apply for an emergency permit number by any Department-approved method.
- Section 2-14(f)(4) is amended to clarify that owner identification requirements for commercial refuse containers are not applicable to CONEX boxes which pursuant to newly added Section 2-14(g)(2) are prohibited on City streets unless authorized by the Commissioner.
- Section 2-14(g) is amended to establish a subdivided section of the Highway Rule entitled "Placement or storage of material and equipment on the street." This amendment will add a new paragraph to define the term "CONEX boxes" and codify DOT's prohibition against placement of CONEX boxes on City streets. This change is designed to eliminate confusion by explicitly stating that CONEX boxes are prohibited.
- Section 3-01 is amended to increase certain penalty amounts and add new penalties for violations adjudicated at the Office of Administrative Trials and Hearings. Specifically, the proposed rule will increase the penalty amounts of six (6) current violations and update the schedule to reflect five (5) proposed amendments to the Highway Rules. For example, the penalty for using a construction shanty/trailer without a DOT permit would increase from \$150 to \$1,200 and the penalty for failure to restore pavement in kind in designated historic districts would increase from \$250 to \$750. These changes are expected to increase compliance with the Department's rules and thereby promote public safety in street construction and maintenance processes.
- The proposed rule also includes plain language edits throughout.

New material is underlined.

[Deleted material is in brackets.]

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

**§ 1. The definitions of “Embargo period” and “Emergency work” set forth in section 2-01 of chapter 2 of Title 34 of the Rules of the City of New York are amended, and a new definition of “Holiday embargo” is added, to read as follows:**

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**Embargo period.** The term "embargo period" means a period of time designated by the OCMC during which there shall be a temporary suspension of work (except for emergency work as provided in 34 RCNY § 2-02(m)) due to [a] the “Holiday[;] embargo” as defined herein, special event, or emergency.

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**Emergency work.** The term "emergency work" means work undertaken in the street that is necessary to [correct] rectify a situation endangering the public safety or causing or likely to cause the imminent interruption of service required by law, contract or franchise to be continuously maintained, for example, by a government agency, a public utility, a franchisee, etc. Such term shall not include work on new construction, regrades of existing hardware, continuation of an existing permit that has expired or will expire imminently or any other work which is not necessary to correct a condition likely to cause such imminent interruption.

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**Holiday embargo.** The term “holiday embargo” means a period of time within which work is suspended as designated by OCMC that shall extend annually from mid-November to the beginning of January. Information regarding holiday embargo will be available on the Department’s website.

**§ 2. Paragraph (4) of subdivision (g) of section 2-02 of chapter 2 of Title 34 of the Rules of the City of New York, relating to the responsibilities of underground facility owners, is REPEALED.**

**§ 3. Section 2-02 of chapter 2 of Title 34 of the Rules of the City of New York is amended by adding new subdivisions (o) and (p) to read as follows:**

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(o) *Compliance.* Applicants, permittees, and persons conducting business with the Department must comply with all applicable sections of these rules, the Standard Specifications, the Standard Detail Drawings, and all other applicable laws or rules. Any person who violates this provision may be liable for a separate and distinct offense each day that such violation is continued.

(p) *Prohibited act.* It is strictly prohibited to tamper with or falsely alter a permit issued by the Department. If it is determined that false information was knowingly entered on a permit, the Commissioner may revoke or refuse to issue said permit to an applicant and/or permittee pursuant to the provisions of 34 RCNY § 2-02 (k) and (l) above.

**§ 4. Paragraph (3) of subdivision (d) of section 2-05 of Title 34 of the Rules of the City of New York is amended to read as follows:**

(3) The name, address and telephone number of the owner shall be printed on two sides of each container used for construction debris. This requirement does not apply to [conex]CONEX [containers (commonly referred to as shipping or cargo containers)] boxes, which pursuant to 34 RCNY § 2-14(g)(2) are not permitted on City streets unless otherwise authorized by the Commissioner.

**§ 5. Paragraph (8) of subdivision (a) of section 2-07 of chapter 2 of Title 34 of the Rules of the City of New York is amended, and a new paragraph (9) is added, to read as follows:**

(8) Flagpeople. Unless otherwise directed by the Commissioner, permittees whose work results in the closing of a moving traffic lane and/or bicycle lane and requires traffic to be temporarily diverted to a travel lane in the opposite direction (or, for bicycles, the same direction), [shall]must, at all times while actively working at the site, post a flagperson or flagpersons or utilize an authorized plan for the maintenance and protection of traffic at the point where traffic is diverted to assist motorists, bicyclists, and pedestrians to proceed around the obstructed lane.

(9) Underground facility owners shall be responsible for any surface defects caused by their facility underneath the roadway. Responsibility for such surface defects may be established pursuant to Department approved testing mechanisms.

**§ 6. Paragraph (2) of subdivision (b) of section 2-07 of chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:**

(2) The owners of covers or gratings shall replace or repair any cover or grating found to be defective and shall repair any defective street condition found within an area extending twelve inches outward from the perimeter of the cover, [or] grating, or concrete pad. Such owner must obtain a permit to maintain a steel plate that is covering such cover or grating or such street condition.

**§ 7. Subparagraph (v) of paragraph (4) of subdivision (e) of section 2-11 of chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:**

(v) Flagpeople. Unless otherwise directed by the Commissioner, permittees whose work results in the closing of a moving traffic lane and/or bicycle lane and requires traffic to be temporarily diverted to a travel lane in the opposite direction (or, for bicycles, the same direction), [shall]must, at all times while actively working at the site, post a flagperson or flagpersons or utilize an authorized plan for the maintenance and protection of traffic at the point where traffic is diverted to assist motorists, bicyclists, and pedestrians to proceed around the obstructed lane.

**§ 8. Subparagraphs (ii), (iii), and (v) of paragraph (10) of subdivision (e) of section 2-11 of chapter 2 of Title 34 of the Rules of the City of New York are amended, and a new subparagraph (ix) is added to read as follows:**

(ii) The size of the plate or decking must extend a minimum of 12 inches beyond the edge of the trench, be firmly placed to prevent rocking, and be sufficiently ramped, covering all edges of the [steel] plates to provide smooth riding and safe condition.

(iii) All plating and decking shall be fastened by splicing, spiking, pinning, welding, countersinking or otherwise protected to prevent movement. When the plates are removed all pins and spikes must be removed and the holes must be filled with a fine asphalt concrete mix.

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(v) All permittees and/or entities who [install] have plating and decking during the winter moratorium, as determined by the Department, shall post signs at the site indicating "[Steel ]Plates Ahead" or "Raise Plow" and countersink said plates flush to the level of the roadway. All signs shall comply with all applicable requirements pursuant to 34 RCNY § 2-02(h). These signs shall be placed on the sidewalk, adjacent to the curb, facing vehicle traffic five feet prior to the plates. On two-way streets, signs shall be placed on both sides of the street five feet prior to the plates. For purposes of this paragraph, the winter moratorium period shall extend from the beginning of December to the end of March of each year. Information regarding winter moratorium periods will be available on the Department's website.

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(ix) Before a holiday embargo, as defined in 34 RCNY § 2-01, a permittee and/or entity must remove all plating and decking, backfill and temp to grade pursuant to 34 RCNY § 2-11(e)(9)(i). A permittee and/or entity may not install plating or decking during a holiday embargo unless they obtain either: (1) a waiver from the Department authorizing work during the embargo period, or (2) an emergency authorization number, in accordance with 34 RCNY §§ 2-07 and 2-11. After a holiday embargo, a permittee/entity must apply for a new permit to commence work.

**§ 9. Subparagraphs (vi) and (vii) of paragraph (12) of subdivision (e) of section 2-11 of chapter 2 of Title 34 of the Rules of the City of New York are amended to read as follows:**

(vi) Whenever any street is excavated, the permittee [shall]must restore such street in kind as to material type, color, finish or distinctive design[.], except when a street is made safe by the Department, in which case, such permittee must restore such street to its prior legal condition or as directed by the Commissioner.

(vii) Pavements [shall] must be restored in kind in designated historic districts and on streets constructed with cobblestones or other distinctive pavements, except when a street is made safe by the Department, in which case, such permittee must restore such street to its prior legal condition or as directed by the Commissioner.

**§ 10. Subparagraph (iii) of paragraph (16) of subdivision (e) of section 2-11 of chapter 2 of Title 34 of the Rules of the City of New York, relating to the duties of permittees, is REPEALED.**

**§ 11. Subparagraphs (xiii) of paragraph (2) of subdivision (g) of section 2-11 of chapter 2 of Title 34 of the Rules of the City of New York are amended to read as follows:**

(xiii) Flagpeople. Unless otherwise directed by the Commissioner, permittees whose work results in the closing of a moving traffic lane and/or bicycle lane and requires traffic to be temporarily diverted to a travel lane in the opposite direction (or, for bicycles, the same direction), [shall]must, at all times while actively working at the site, post a flagperson or flagpersons or utilize an authorized plan for the maintenance and protection of traffic at the point where traffic is diverted to assist motorists, bicyclists, and pedestrians to proceed around the obstructed lane.

**§ 12. Paragraph (3) of subdivision (g) of section 2-11 of chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:**

(3) *Application.* When applying for an emergency permit number [by fax] in a manner prescribed by the Department, a permittee [shall]must submit all information required by the Department. This information includes, but is not limited to, the following:

- (i) Name of permittee
- (ii) Permittee ID #
- (iii) Location of emergency (including borough)
- (iv) Type of emergency (including interruption of service)

**§ 13. Paragraph (4) of subdivision (f) of section 2-14 of chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:**

(4) The name, address and telephone number of the owner of the container [shall]must be permanently affixed in characters at least three inches high both on the side of the container that faces the sidewalk area and also on the opposite side that faces the street, with such display being in a color contrasting with that of the container and placed approximately midway vertically. This requirement does not apply to CONEX boxes, as defined in paragraph (2) of subdivision (g) of this section.

**§ 14. Subdivision (g) of section 2-14 of chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:**

(g) [*Storage boxes.* No person shall place on any street a box for the purpose of storing written matter or any other type of material or attach such box to any item of street furniture or to the pavement in any way] Placement or storage of material and equipment on the street.

(1) Storage boxes. No person shall place on any street a box for the purpose of storing written matter or any other type of material or attach such box to any item of street furniture or to the pavement in any way.

(2) CONEX boxes. Placement of CONEX boxes on any street is prohibited, unless otherwise authorized by the Commissioner. For purposes of this paragraph CONEX boxes are metal shipping or cargo containers that are used for storage purposes.

**§ 15.** The entries for sections 2-05 (h)(1), 2-05 (h)(4), 2-09 (f)(4)(xvi), 2-11(e)(10)(viii), 2-11(e)(12)(vii), and 2-11(f)(4)(v) of chapter 2 of Title 34 of the Rules of the City of New York in the table set forth in section 3-01 of Title 34 of the Rules of the City of New York are amended, and new entries are added, in numerical order as follows:

| <u>Section</u>                    | <u>Description</u>                                                                                                                                                        | <u>Penalty (\$)</u>          | <u>Default (\$)</u>          |
|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|------------------------------|
|                                   | ***                                                                                                                                                                       |                              |                              |
| <u>34 RCNY § 2-02 (d)(8)</u>      | <u>Failure to take corrective action within three (3) hours of issuance of a priority CAR</u>                                                                             | <u>750</u>                   | <u>1,000</u>                 |
|                                   | ***                                                                                                                                                                       |                              |                              |
| <u>34 RCNY § 2-02 (o)</u>         | <u>Failure to comply with all applicable sections of the Highway Rules, the Standard Specifications, Standard Detail Drawings, and all other applicable laws or rules</u> | <u>750</u>                   | <u>2,250</u>                 |
|                                   | ***                                                                                                                                                                       |                              |                              |
| <u>34 RCNY § 2-02 (p)</u>         | <u>Tampered with, and/or falsely altered DOT permit</u>                                                                                                                   | <u>5,000</u>                 | <u>15,000</u>                |
|                                   | ***                                                                                                                                                                       |                              |                              |
| <u>34 RCNY § 2-05 (h)(1)</u>      | <u>Construction shanty/trailer without DOT permit</u>                                                                                                                     | <u>[150]</u><br><u>1,200</u> | <u>[450]</u><br><u>3,600</u> |
|                                   | ***                                                                                                                                                                       |                              |                              |
| <u>34 RCNY § 2-05 (h)(4)</u>      | <u>Failure to remove shanties/trailers from roadway/sidewalk</u>                                                                                                          | <u>[250]</u><br><u>750</u>   | <u>[750]</u><br><u>2,250</u> |
|                                   | ***                                                                                                                                                                       |                              |                              |
| <u>34 RCNY § 2-09 (f)(4)(xvi)</u> | <u>Except as in NYC Administrative Code § 19-152, failure to obtain DOT approval for distinctive sidewalk</u>                                                             | <u>[250]</u><br><u>500</u>   | <u>[750]</u><br><u>1,500</u> |
|                                   | ***                                                                                                                                                                       |                              |                              |

|                                 |                                                                                                                  |                       |                         |
|---------------------------------|------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|
| 34 RCNY § 2-11(e)(10)(viii)     | Failure to add required identifying information to plating and decking                                           | [250]<br><u>500</u>   | [500]<br><u>1,500</u>   |
|                                 | ***                                                                                                              |                       |                         |
| 34 RCNY § 2-11(e)(12)(vii)      | Failure to restore pavement in kind in designated historic district                                              | [250]<br><u>750</u>   | [750]<br><u>2,250</u>   |
|                                 | ***                                                                                                              |                       |                         |
| 34 RCNY § 2-11(f)(4)(v)         | Failure to conform to the applicable Standard Detail Drawing #H-1042 or DOT approved standard (protected street) | [750]<br><u>1,200</u> | [1,000]<br><u>3,600</u> |
| <u>34 RCNY § 2-11(f)(4)(vi)</u> | <u>Failure to restore street opening or excavation to DOT protected street restoration requirements</u>          | <u>1,200</u>          | <u>3,600</u>            |
|                                 | ***                                                                                                              |                       |                         |
| <u>34 RCNY § 2-14(g)(1)</u>     | <u>Placement of storage box on or attachment to City street or street furniture</u>                              | <u>1,200</u>          | <u>3,600</u>            |
|                                 | ***                                                                                                              |                       |                         |
| <u>34 RCNY § 2-14(g)(2)</u>     | <u>Placement of CONEX box on City street without authorization from the Commissioner</u>                         | <u>1,200</u>          | <u>3,600</u>            |