

COMMENT ON PROPOSED RULE

To: New York City Department of Buildings, Office of the General Counsel
280 Broadway, 7th Floor, New York, NY 10007
dobrules@buildings.nyc.gov
Re: Proposed 1 RCNY 101-20, Incomplete Inspections
Reference No. DOB-210 / 26 RG 004
Public hearing 9/9/26, 11:00 AM; written comments due 9/9/26
From: Yosep Blake Bak, P.E., New York State Professional Engineer,
License No. 107881

Submitted in an individual capacity. No client interest is held in any matter addressed in this comment. The commenter is a member of the discrete regulated community to which Charter Section 1043(e) directs agency outreach, is a registered design professional who requests and attends Department inspections, and files design and compliance documentation under the codes and rules discussed. No allegation of misconduct by any individual is made or implied.

1. POSITION

I support this rule. I support it strongly, and I want it to be more forceful than proposed, not less. I am asking for four modifications and one disclosure. Every request below is directed at making the rule survive challenge and function as designed.

The Department has correctly identified a real and expensive problem. Approximately 44,000 incomplete electrical inspections between 2021 and May 2026 is a serious operational failure by the regulated community, and I am part of that community. A permit holder who books a public inspector's time and does not show up prepared has taken a public resource and wasted it. There should be a consequence, it should be recorded, and it should follow the licensee.

I would go further than the Department proposes:

(a) The record of incomplete inspections should be permanent, queryable, and published as a structured public dataset keyed to license number, not held only internally.

(b) The Department should share that record with the New York State Education Department and the applicable licensing boards, which hold the underlying professional licenses, and should seek their guidance on the disciplinary thresholds in subdivision (e).

(c) The fee should escalate for repeat occurrences within a rolling twelve-month period rather than remain flat.

None of that is possible under the rule as drafted, because the rule creates no record obligation at all. It creates a charge.

2. THE PRINCIPLE THIS RULE ESTABLISHES

The Statement of Basis and Purpose articulates a principle I agree with and want applied consistently:

When a party schedules a proceeding that consumes public resources, and then fails to appear prepared, that party bears the cost of the wasted appearance.

That is a sound principle. It is the same principle that governs court appearances, medical appointments, and every commercial calendar in the city. My comment is that the principle is sound in both directions, and that a rule which applies it in only one direction will be, and should be, criticized on that basis.

3. THE ARITHMETIC PROBLEM WITH THE \$200 FIGURE

This is my central technical objection, and it is offered so the Department can cure it before adoption.

The Statement of Basis and Purpose states that approximately 44,000 incomplete electrical inspections between 2021 and May 2026 cost the City "over \$2 million."

$$\$2,000,000 / 44,000 \text{ incidents} = \text{approximately } \$45.45 \text{ per incident.}$$

The proposed fee is \$200 per incident. On the Department's own published figures, that is approximately 4.4 times the stated cost.

Subdivision (c) states that the fee is imposed "to recoup the cost incurred by the Department to attend the inspection appointment." A fee justified expressly as cost recovery must be reasonably related to the cost recovered. Under settled New York law a regulatory fee must bear a reasonable relationship to the cost of the regulation it funds; a fee materially exceeding that cost is an unauthorized tax, which a city may not levy absent State authorization. This is not a technicality. It is the most likely ground on which this rule would be challenged by a party who does not want it to exist, and I do not want that party to win.

There are three possible explanations, and the Department should state which applies:

(i) The "over \$2 million" figure is materially understated and the true per-incident cost approaches \$200. If so, publish the actual figure and its components.

(ii) The \$200 includes costs beyond attendance – scheduling, administrative overhead, queue displacement, vehicle and fuel, supervisory time. If so, subdivision (c) should say so, and the components should be itemized.

(iii) The \$200 is set at a deterrent level above cost. If so, the rule is a penalty rather than a cost-recovery fee, and it should be structured, authorized, and reviewable as a penalty, including a cure period analysis under Charter Section 1043(d) (iii) and Administrative Code Section 1042. The certification filed with this rule states that no cure period is provided "because it does not establish a violation." A charge set above cost to deter conduct is functionally a penalty regardless of its label.

REQUEST 1. Publish, before adoption, the itemized cost basis for the \$200 figure: fully loaded hourly rate for the inspector classification, average hours consumed per incomplete inspection including travel, administrative and scheduling cost per appointment, vehicle and fuel cost, and

the methodology by which the "over \$2 million" figure was derived. If the fee is deterrent rather than compensatory, say so on the record and reauthorize it accordingly.

I make this request in exactly the same terms in which I made it to the Department on the proposed QPSI, QEWI and QRWI designation fees in my comment on the FY2027 Regulatory Agenda. The standard should not vary with whether I like the fee. I like this one. Publish the cost basis anyway.

4. THE CHARTER SECTION 1043(d) CERTIFICATION CANNOT REST ON THE PRESENT RECORD

The Mayor's Office of Operations certified on July 22, 2026 that the proposed rule "minimizes compliance costs for the discrete regulated community." No cost analysis supporting that certification appears in the rulemaking record. A certification that a fee minimizes compliance costs, filed in support of a rule that creates a new \$200 charge with no published derivation, is a certification made on an incomplete record.

REQUEST 2. Place the analysis underlying the Section 1043(d) certification in the public rulemaking record and identify where the public may inspect it.

5. THE CHALLENGE PROCESS IS THE WEAKEST PART OF THE RULE

Subdivision (f)(3)(i) provides that "the decision to dismiss or uphold the fee is at the sole discretion of the Department."

As drafted, subdivision (f):

- requires the challenger to produce time-stamped photographs, video, logs and correspondence;
- permits denial of challenges "submitted without sufficient supporting evidence";
- requires no written reasons from the Department;
- provides no independent review, including no referral to the Office of Administrative Trials and Hearings;
- creates no published record of determinations; and
- makes no provision for the inspector's own contemporaneous record to be disclosed to the

challenger.

The evidentiary burden runs entirely in one direction. The licensee must document the site. The Department need not document anything, need not explain, and reviews itself.

I want to be precise about why this matters to me as a supporter of the rule. Subdivision (e) permits referral for suspension, revocation, or denial of renewal of a professional license. A determination that can end a career should not be unreviewable and unexplained. That is not a close question, and it is the provision most likely to be struck if this rule is litigated.

REQUEST 3. Amend subdivision (f) to require that:

- (a) every determination be issued in writing and state the reasons for it;
- (b) the inspector's contemporaneous field record for the appointment at issue be disclosed to the challenger on request before the challenge is due;
- (c) determinations be appealable to the Office of Administrative Trials and Hearings, or in the alternative be reviewed by a Departmental unit organizationally separate from the unit that scheduled the inspection; and
- (d) determinations be published in aggregate, quarterly, as a structured dataset showing the number of fees imposed, challenged, dismissed and upheld, by inspection type and borough.

Delete the phrase "sole discretion." It adds no authority the Department does not already have and it invites the only serious legal attack available against an otherwise sound rule.

REQUEST 4. Add a definition or standard for circumstances outside the permit holder's control. As drafted, subdivision (b)(4) makes any cancellation received fewer than three business days before the appointment an incomplete inspection, without exception for weather, utility shutdown, building emergency, death, or medical incapacity. A rule that charges a licensee \$200 for having a heart attack is not the rule the Department intends to write.

6. SYMMETRY: APPLY THE SAME STANDARD TO THE DEPARTMENT

This section is the reason I am writing at length, and I ask the Department to read it as an argument for the rule rather than against it.

The rule stands on the proposition that a party who schedules a proceeding and fails to appear prepared should bear the cost. The Department schedules proceedings too. Chapter 45 of the Charter requires it to publish a proposed rule, hold a hearing, accept comment, and place comments in a public record. Members of the regulated community take unpaid time to read the proposal, analyze it, and appear.

When a rulemaking proceeds to hearing while the studies, deliverables and mandated reports that inform it are not in the public record, that is the same failure the rule addresses: the proceeding occurs, public and private time is consumed, and the record necessary to conduct it is not present. The commenter arrives prepared. The record does not.

I am not asking the Department to fine itself. I am asking for four things it can do by rule and one it should ask the Council for.

REQUEST 5. The obligation should attach to the office, not only to the line staff. The rule as drafted reaches "registered design professionals, licensees, general contractors, third-party contractors, owners and filing representatives." The corresponding obligations of record completeness should attach by rule to the Commissioner, the Deputy Commissioners, and the Assistant Commissioner responsible for each rulemaking, by title, as the officers who certify and sign. I am proposing duties of disclosure attached to offices. I am not proposing personal liability, and I make no allegation against any officeholder.

REQUEST 6. No rule should proceed to adoption where a publicly funded study, deliverable, or mandated report that informs it has not been placed in the rulemaking record and submitted to the Government Publications Portal. Where such a document is outstanding, the comment period should toll until it is published, and the rule should be re-noticed.

I have filed a separate petition under Charter Section 1043(g)

proposing rule text to that effect,
using the structure of proposed Section 101-20 as its model.

7. THE RECORD COMPLETENESS PROBLEM, STATED WITH THE EVIDENCE I HAVE

The Statement of Basis and Purpose justifies this rule by quantifying a cost to the City of "over \$2 million" in wasted inspector time. I accept that figure and I want it recovered.

I note for the record that publicly reported and publicly filed expenditures on the façade and sidewalk shed program during the overlapping period substantially exceed that figure, and that the deliverables produced under several of those engagements are not presently locatable in the rulemaking records they informed:

- Arup US and Practice for Architecture and Urbanism were selected on February 29, 2024 to produce six sidewalk shed and pedestrian protection designs. The engagement has been publicly reported at \$3.5 million. Designs were unveiled November 18, 2025.

- Thornton Tomasetti, Inc. was engaged in May 2024 to review the Façade Inspection and Safety Program. The FISP Recommendations Report is dated December 10, 2025.

- Contract CT181020268807803 with 2050 Partners LLC, purpose field "LL97 STUDIES," carries a value of \$1,600,000, began performance March 6, 2026, was registered June 8, 2026, and appears on the Comptroller's Late Contracts Dashboard. No deliverable under it appears in the record of the concurrent Section 5000-01 rulemaking.

[INSERT: Checkbook NYC contract IDs, current spend-to-date, and any modification or extension amounts you have personally verified, including the Thornton Tomasetti extension. Do not state a figure you cannot produce from Checkbook or the City Record. Cite the contract ID at the point of use, exactly as you did in Exhibit C.1.]

I raise these not to suggest that any of that spending was improper. I raise them for one reason: the Department is asking, correctly, that a party who wastes public resources pay for it, and the

Department's own figure for the waste it seeks to recover is smaller than the sums it has spent on studies whose deliverables the public cannot presently locate. If \$2 million in lost inspector time warrants a rule, then several million dollars in study deliverables warrants publication.

On March 26, 2025 the Council passed Introduction 394-A, which extended the façade inspection cycle and directed the Department to review inspection frequency and report recommendations by December 31, 2025. The report informing that change was published December 10, 2025, nine months after passage. On November 19, 2025 the change was publicly described as paired with "the first-ever, evidence-based engineering study" of the City's façade safety requirements – three weeks before that study was published.

I am a licensed engineer. I am required to have my basis of design in hand before I stamp a drawing, not nine months after. I am asking the Department to hold itself to the standard it holds me to, and I am asking it in support of a rule that does exactly that to my own profession.

REQUEST 7. Publish, or state on the record that none exists, each deliverable produced under the engagements above that informed any rule adopted or proposed since January 1, 2024, and confirm submission of each to the Government Publications Portal as required by Charter Section 1133.

8. ONE THING THAT CANNOT BE DONE BY RULE, STATED SO THE RECORD IS CLEAR

I would support criminal exposure for knowingly reducing a public safety standard on a fabricated or absent evidentiary basis. That cannot be created by a rule. Charter Section 1043(a) empowers an agency to adopt rules carrying out powers delegated to it by law; it does not permit an agency to create criminal liability, and a petition asking it to do so would be properly denied in one sentence. That request belongs before the Council as legislation, and I am directing it there separately. I state it here only so that no one mistakes the scope of what I am asking this Department to do.

9. SUMMARY OF REQUESTS

1. Publish the itemized cost basis for the \$200 fee, or state that it is a deterrent penalty and authorize it as one.
2. Place the Section 1043(d) cost analysis in the public rulemaking record.
3. Amend subdivision (f): written reasons, disclosure of the inspector's field record, independent review, published aggregate determinations; delete "sole discretion."
4. Add an exception standard for circumstances outside the permit holder's control.
5. Attach record-completeness duties to the Commissioner, Deputy Commissioners, and the Assistant Commissioner responsible for each rulemaking, by title.
6. Toll any comment period during which an informing study, deliverable, or mandated report remains unpublished, and re-notice the rule.
7. Publish all deliverables produced under the engagements identified in Section 7, or state on the record that none informed the rules at issue, and confirm GPP submission.
8. Make the incomplete-inspection record permanent, queryable, published as structured data keyed to license number, and shared with the New York State Education Department and the applicable licensing boards.

I would rather this rule be adopted with a published cost basis and a real challenge process than adopted quickly and vacated later. Every request above is directed at that outcome.

Respectfully submitted,

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