

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Buildings (DOB) is proposing to amend the rules regarding approved agencies and facade inspections.

When and where is the hearing? DOB will hold a public hearing on the proposed rule. The public hearing will take place at 10am on 12/30/19. The hearing will be in the 4th floor Reade Street conference room at 280 Broadway.

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 in the hearing room before the hearing begins on 12/30/19. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit comments by 12/30/19.

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 must tell us if you need a sign language interpreter. You can tell us by mail or email at the addresses given above. You may also tell us by telephone at 212-393-2085. You must tell us by 12/16/19.

This location has the following accessibility option(s) available: Wheelchair accessibility.

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/>. A few days after the hearing, 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.

What authorizes DOB to make this rule? Sections 643 and 1043(a) of the City Charter and Article 302 of Title 28 of the 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 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 Rule

The purpose of these proposed rule amendments is to clarify the qualifications and responsibilities of qualified exterior wall inspectors, as well as the requirements for exterior wall inspections and repairs. Recent inspections have revealed significant deficiencies in façade compliance reporting by registered design professionals; therefore, the Department is enhancing the qualified exterior wall inspector qualifications, inspection requirements and civil penalties against owners to ensure public safety.

The rule:

- adds new requirements regarding the experience and responsibilities of the Qualified Exterior Wall Inspector (QEWI) to ensure inspectors have appropriate knowledge of exterior walls and how to conduct inspections of those walls;
- adds a new requirement that owners post and maintain the building facade status in the lobby in a manner similar to elevator certificates, to alert the building occupants of the exterior wall status;
- adds a new requirement for close-up inspections to be performed at intervals of not more than 60'-0" fronting each public right-of-way in order to allow for more thorough inspections of the exterior wall;
- adds a new requirement that the QEWI probes whether ties are present and in good condition at cavity wall buildings in every odd cycle because there have been recent failures of cavity walls due to missing or deficient ties;
- requires photographic evidence of close-up inspections in progress to guard against false filings;
- increases civil penalties and adds a new one for failure to correct "safe with a repair and maintenance program" (SWARMP) conditions to compel owners to maintain exterior walls in a safe condition;
- modifies the criteria for waiving civil penalties; and
- makes plain language revisions throughout.

The Department of Buildings' authority for this rule is found in sections 643 and 1043 of the New York City Charter and Article 302 of Title 28 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

"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 (12) of subdivision (a) of section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (12) *Qualified exterior wall inspector.* A registered design professional with at least [1 year] seven years of relevant experience with facades over six stories.

§ 2. Paragraph (7) of subdivision (c) of section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(7) *Exterior wall inspections.*

- (i) Examination of a building's exterior walls and appurtenances [thereof]pursuant to section 28-302.2 of the Administrative Code [shall] must be performed by or under the direct supervision of a qualified exterior wall inspector.
- [(ii) A qualified exterior wall inspector shall maintain records of inspections and tests for at least 6 years and shall make such records available to the department upon request.
- (iii) A qualified exterior wall inspector shall maintain insurance coverage as set forth in paragraph (7) of subdivision (b) above.
- (iv) Except as modified by the building code and this section, the provisions of 1 RCNY 103-04 shall apply.]
- (ii) The qualified exterior wall inspector applicant must provide a detailed résumé indicating relevant work experience obtained in any US city or jurisdiction. When relevant experience is obtained while employed by another registered design professional who was signing and sealing such relevant work, a letter must be provided indicating length of the qualified exterior wall inspector applicant's employment and his or her responsibilities.
- (iii) A qualified exterior wall inspector applicant must demonstrate to the commissioner's satisfaction, including performance on any written or oral tests the commissioner may require, that he or she is sufficiently familiar with the Construction Codes, laws and rules pertaining to facades and concepts specific to facade science.

§ 3. Section 103-04 of Title 1 of Subchapter C of Chapter 100 of the Rules of the City of New York is amended to read as follows:

§ 103-04 Periodic Inspection of Exterior Walls and Appurtenances of Buildings.

(a) *Definitions.* For the purposes of this section, the following terms have the following meanings.

Acceptable report. A technical examination report filed by a Qualified Exterior Wall Inspector that meets the requirements of the Administrative Code and this rule as determined by the Department.

Amended report. A technical examination report filed by a Qualified Exterior Wall Inspector who certifies that the unsafe conditions reported in the initial report have been repaired and that no unsafe conditions exist at the building.

Appurtenance. An exterior wall element including, but not limited to, fire escapes, exterior fixtures, ladders to rooftops, flagpoles, signs, parapets, railings, copings, guard rails, window frames (including hardware and lites), balcony and terrace enclosures, including greenhouses or solariums, window guards, window air conditioners, flower boxes, satellite dishes, antennae, cell phone towers, and any equipment attached to or protruding from the facade.

Cavity wall construction. A wall built of masonry units or concrete with a brick veneer, or a combination of these materials in which the inner and outer parts of the wall are tied together with metal ties and are arranged in such a manner which may or may not provide an airspace within the wall.

Critical examination. An examination conducted to review the exterior of a building and all parts thereof to determine whether the exterior walls (facades) and the appurtenances [thereto] are either safe, unsafe, or safe with a repair and maintenance program (SWARMP) and whether, in the judgment of a Qualified Exterior Wall Inspector, they require remedial work.

Filed report. A report shall be deemed filed with the Department when it has been received by the Department. The filed report [shall] must be completed in accordance with the provisions of paragraph (3) of subdivision [(b)] (c) of this section.

Filing window. The two-year period during which a report for a particular building may be filed without penalty.

Public right-of-way. A public street, avenue, sidewalk, roadway or any other public place or public way.

Qualified Exterior Wall Inspector (hereinafter “QEWI”). A qualified exterior wall inspector as defined in section 101-07 of the rules of the [department]Department.

Report filing cycle. The five-year time interval established by the Commissioner for the filing of each successive report for each successive critical examination of every building subject to the requirements of Article 302 of Title 28 of the Administrative Code.

Safe condition. A condition of a building wall, any appurtenances thereto or any part thereof not requiring repair or maintenance to sustain the structural integrity of the exterior of the building and that will not become unsafe during the next five years.

Safe with a repair and maintenance program (hereinafter “SWARMP”). A condition of a building wall, any appurtenances thereto or any part thereof that is safe at the time of inspection, but requires repairs or maintenance during the next five years in order to prevent its deterioration into an unsafe condition during that five-year period.

Staggered inspection cycle. The separate time intervals for filing reports of critical examinations as determined by the last digit of the building’s block number, beginning February 21, 2010, and continuing thereafter for each subsequent report filing cycle.

Subsequent report. A technical examination report that is filed by a QEWI after an acceptable report in order to change the status of the building for that report filing cycle to reflect changed conditions or the recommended time frame for repairs of SWARMP or unsafe conditions.

Unsafe condition. A condition of a building wall, any appurtenances thereto, or any part thereof that is hazardous to persons or property and requires [prompt] repair within one (1) year of completion of

critical examinations. In addition, any condition that was reported as SWARMP in a previous report and that is not corrected at the time of the current inspection [shall] must be reported as an unsafe condition.

(b) Responsibilities of qualified exterior wall inspectors.

- (1) A QEWI must conduct critical examinations and file reports in accordance with this section and Article 302 of Title 28 of the Administrative Code.
- (2) A QEWI must maintain records of inspections and tests for at least six years and must make such records available to the Department upon request.
- (3) A QEWI must maintain insurance coverage as set forth in paragraph (7) of subdivision (b) of section 101-07 of these rules. Copies of such insurance policies must be made available to the Department upon request.

~~[(b)]~~ (c) Critical examinations.

- (1) *Periodic inspection requirements.* In order to maintain a building's exterior walls and appurtenances [thereto] in a safe condition, and in accordance with Article 302 of Title 28 of the Administrative Code, a critical examination of all parts of all exterior walls and any appurtenances [thereto] of all existing buildings greater than six stories in height or buildings hereafter erected that are greater than six stories in height, except for those parts of any exterior wall that are less than twelve inches (305 millimeters) from the exterior wall of an adjacent building, [shall] must be conducted at periodic intervals.
- (2) *Inspection procedures.*
 - (i) Before any exterior wall for any building is critically examined, the QEWI retained by or on behalf of the owner of the building [shall] must carefully review the most recent report and any available previous reports. The Department will maintain a file of such reports submitted in conformance [with the law in effect prior to July 1, 2008 and] with Article 302 of Title 28 of the New York City Administrative Code, and furnish copies upon payment of fees set forth in the rules of the Department.
 - (ii) [Such examination shall be conducted and witnessed] Examination of a building's exterior walls and appurtenances thereof pursuant to section 28-302.2 of the Administrative Code must be performed by or under the direct supervision of a QEWI retained by the owner of the building or his or her representative.
 - (iii) The QEWI [shall] must design an inspection program for the specific building to be inspected, which [shall] must include, but not be limited to, the methods to be employed in the examination. The inspection program shall be based on the considerations of the type of construction of the building's envelope, age of the material components, the facade's specific exposure to environmental conditions and the presence of specific details and appurtenances. Consideration shall be given to the facade's history of maintenance and repairs as described in previous reports and submittals to the [department]Department.
[Except as provided in subparagraph (viii) of paragraph (2) of this subdivision, the QEWI need not be physically present at the location when the examination is

made.] Architects[,] and engineers, [tradesmen and technicians,] working under the QEWI's direct supervision, may be delegated to perform selected inspection tasks [only when they are employees or subcontractors of the QEWI].

- (iv) The methods used to examine the building [shall] must permit a complete inspection of same. Except as herein required, the use of a scaffold or other observation platform is preferred, but the QEWI may use other methods of inspection as he/she deems appropriate. [A physical examination] Physical examinations from [a scaffold] scaffolding or other observation platform ([a "close-up inspection"] "close-up inspections") [is required for a representative sample of the exterior wall. The QEWI shall determine what constitutes a representative sample. The representative sample shall include at least one physical examination] must be performed at intervals of not more than 60'-0", with the minimum number of physical examinations per length of facade elevation noted in the table below. All physical examinations shall occur along a path from grade to top of an exterior wall [on a street front] fronting each public right-of-way, using at least one scaffold drop or other observation platform configuration, including all exterior wall setbacks. The QEWI shall determine the most deleterious locations and perform physical examinations at those locations. The use of drones, high resolution photography, non-destructive testing, or other similar methods does not eliminate the requirements for close-up inspections.

| <u>Length of Facade Elevation (L)</u> | <u>Minimum # of Physical Examinations per Elevation</u> |
|---|---|
| <u>L <60'-0"</u> | <u>1</u> |
| <u>60'-0" ≤ L <120'-0"</u> | <u>2</u> |
| <u>120'-0" ≤ L <180'-0"</u> | <u>3</u> |
| <u>180'-0" ≤ L <240'-0"</u> | <u>4</u> |
| <u>240'-0" ≤ L <300'-0"</u> | <u>5</u> |
| <u>300'-0" ≤ L <360'-0"</u> | <u>6</u> |
| <u>For every additional 60'-0" of length of facade, one additional close-up inspection is required.</u> | |

- (v) The known history of the building, the nature of the materials used and the conditions observed will dictate the extent of the critical examination. The QEWI [shall utilize] must apply a professional standard of care to assess the building's condition and the individual building systems that comprise the facades, including splitting or fracturing of terra cotta on buildings, cracking of masonry and brick work in brick faced buildings, mortar and other joint materials, loosening or corrosion of metal anchors and supports, water entry or flow within cavities, mineral build-up, coping materials, movement of [lintel] lintel/shelf angles, and [shall] must ascertain the cause of these and such other conditions detected. The QEWI [shall] must order any special or additional inspections and/or tests, including sounding procedures, that may be required to support investigations and to determine the causes of any defects. Starting with the ninth cycle, probes must be performed on all cavity wall construction, and, at a minimum, during

every subsequent odd-numbered cycle. The QEWI shall determine the location of the probes, which shall be in areas not previously renovated. At a minimum, a single probe must be completed along each required close-up inspection interval. The QEWI must ensure that the number and size of the probes are sufficient to report the presence, condition, and spacing of wall ties. The removal of portions of the facade in order to facilitate the performance of tests may require a permit from the Landmarks Preservation Commission.

- (vi) [During the course of the critical examination, photographs shall] Photographs must be taken and/or sketches made during the course of the Critical Examination to properly document the location of all conditions observed that are either unsafe or SWARMP.
 - (vii) Upon discovery of any unsafe condition, the QEWI [shall] must immediately notify the Department and the owner of the building [by letter or fax, in a form and manner as provided by the Department]. The QEWI must identify the location of any unsafe condition and advise the owner on the appropriate protective measures to be taken.
 - (viii) Completion of a critical examination [shall mean] means that the QEWI has conducted a final physical inspection to determine that the building conditions as described in the report are consistent with the actual conditions. Such final inspection [shall] must, at a minimum, include an actual visual examination and a walk around with binoculars or other inspectorial equipment. A drive-by inspection is not acceptable.
- (3) *Report requirements.*
- (i) The QEWI [shall] must file with the Department [and submit a copy to the owner of the building] a written report describing the result of the critical examination, clearly documenting all conditions noted during the inspection and stating that the inspection was performed and completed in accordance with the Administrative Code and this rule. A separate acceptable report must be prepared and filed for each building with a control number, as provided by the Department, even if it shares a Block and Lot number with other structures. The QEWI must also submit a copy of the report to the owner of the building.
 - (ii) Technical information in the report [shall] must adhere to and follow the sequence and the labeling of the report requirements as listed in subparagraph (iii) of this paragraph, and [shall] must be provided on such forms and in such format as the Department [shall require] requires. Additional information may be provided. [All letters (A-O) shall be listed in the report.] If a requirement is not applicable, this [shall] must be indicated on the report [under the relevant letter].
 - (iii) The report [shall] must include an executive overview that [shall consist] consists of a summary of findings and recommendations, a concise statement of the scope of the inspection and findings, the conclusions and recommendations and a determination as to whether the building is categorized as “safe,” “SWARMP,” or “unsafe.” The report [shall] must also include, but [shall] not be limited to:

- (A) The address, any a.k.a. addresses, Block and Lot number, the Building Identification Number (“BIN”), the landmark status of the building, and the location from the nearest cross street[, and a copy of the Property Profile Overview from the Buildings Information System (“BIS”) found on the Department’s website];
- (B) The name, mailing address and telephone number of the owner of the building, or, if the owner is not an individual, the name, mailing address, telephone number, position/title of a principal of the owner;
- (C) A description of the building, including the number of stories, height, plan dimensions, Certificate of Occupancy number if available, usage, and age and type of exterior wall construction, specifying all materials present in the exterior wall;
- (D) A detailed description of any distress, settlements, repairs, or revisions to exterior enclosures since the previous report, including, but not limited to, settlement, splitting or fracturing, displacement, bulging, cracking of any exterior wall elements, loosening of metal anchors and supports, water entry, movement of lintel or shelf angles, or other defects or changes;
- (E) A detailed description of the procedures used in making the critical examination;
- (F) [A detailed description of] The following information:
 1. The extent and location of all physical examinations performed, including odd-numbered cycle cavity wall probes;
 2. The names, addresses, telephone numbers, and license or registration numbers for riggers, contractors, and [other] consultants involved in the critical examination;
 3. A location diagram of a discernable scale and with a north arrow, indicating the main entrance and nearest cross street and locations and dates of close-up inspections; [and]
 4. Dates of the start and completion of the critical examination; and
 5. Dated photo documentation of the QEWI and/or his or her employees performing physical (“close-up”) inspections.
- (G) A description, [and] classification, and mapping of each significant condition observed including deterioration and any movement detected and the apparent water-tightness of the exterior surfaces. The description must also include a list of all the exterior appurtenances and their condition. [Appurtenances include, but are not limited to, exterior fixtures, flagpoles, signs, parapets, railings, copings, guard rails, window frames (including hardware and lights), balcony enclosures, window guards, window air conditioners, flower boxes, and any equipment attached to or protruding from the facade.] Each condition must be

classified as safe, unsafe or SWARMP. If the building is classified as unsafe or SWARMP, the report must include the locations and descriptions of all unsafe or SWARMP conditions. If unsafe conditions are noted, the report must indicate the type and location of public protection. Photographs must be labeled and the report must include key plans, key elevations and locator drawings documenting these conditions. Balcony railings must be inspected to ensure that their components (balusters, intermediate railings and panel fillers) are positively secured against [upward] movement (e.g. by welds, bolts or screws). If any balcony [enclosure] railing or parapet railing, or balcony enclosure, or greenhouse structure is found not to be positively secured, the condition is classified as unsafe and must be made safe pursuant to the requirements of paragraph (5) of subdivision [b] (c) of this section. [In the event a cycle seven report has already been filed with the Department pursuant to paragraph (4) of this subdivision, a separate report regarding the condition of the balcony enclosures must be filed within cycle seven.]

- (H) An analysis of the causes of the conditions reported as unsafe or SWARMP.
- (I) A detailed status report of maintenance work performed up to the date of submission of the report and the maintenance plan implemented for building facades;
- (J) A comparison of currently observed conditions with conditions observed during the previous report filing cycle examinations, including the status of the repairs or maintenance performed with respect to the prior conditions. The following [shall] must be included and discussed:
 - 1. Work permit numbers relating to facade repairs, including permits for sheds;
 - 2. Job numbers, status and sign-off dates for any facade related jobs, where applicable; and
 - 3. Violation numbers of any open Environmental Control Board (“ECB”) facade violations and the status of the repairs of the conditions cited in the ECB violations;
- (K) [Detailed recommendations] Recommendations for repairs or maintenance of SWARMP [items] and unsafe conditions, including:
 - 1. If a building is categorized as SWARMP:
 - [1.] (A.) The recommended time frame for such repairs or maintenance to be performed, which [shall] must indicate the date by which the work [shall] must be performed [(MM/YYYY)] (MM/DD/YYYY) to prevent the conditions from becoming unsafe and not the date on which work is planned or scheduled;

[2.] (B.) Time frames of less than one (1) year, “ASAP,” or “immediately,” shall not be accepted.

2. If a building is categorized as unsafe:

A. The QEWI must provide a recommended time frame for repairs to be performed to bring the building to SWARMP or safe status, and must indicate the date by which the work will be completed (MM/DD/YYYY);

B. Time frames of more than five (5) years will not be accepted.

(L) A list and description of the work permits required to accomplish the necessary work. If no work permits will be required, the reason [shall] must be indicated;

(M) All photographs must be color, clearly legible, dated, and high resolution. Digital photos must be a minimum of 800 x 600 pixels. Photographs must be arranged into PDF uploads of no larger than 11” x 17”. The following photos must be submitted:

1. Elevation photos. Color photographs of the primary house number and at least one view of the entire street front elevation for all reports regardless of the building’s filing condition[, and color photographs and sketches documenting any conditions that are either unsafe or SWARMP and their locations. Photographs shall be at least 3” x 5” (76mm x 127mm) in size, unless otherwise requested by the Department. The photographs shall be dated and both the original photographs and all required copies shall be in color].

2. [The page/sheet size for attachments shall not exceed 11” x 17” (280mm x 430mm).] Detailed condition photos. Color photographs of specific conditions must be clearly labeled and indicate the status designation. Detailed conditions must be located on the mapping of the building’s facade required by item G of this subparagraph (iii).

A. All SWARMP and unsafe must be catalogued.

B. If building status is safe, submit a minimum of three typical conditions.

3. Cavity wall probe photos. Color photographs of the following items:

A. each probe opening showing the location and size of the probes;

- B. the interior of the probe showing the cross section of the wall;
- C. the measurement of the spacing of the wall ties;
- D. a close-up of the wall tie type and installation;
- E. any other condition that indicates the soundness of the wall ties and cavity wall;
- F. condition of relieving angle, including flashing and connection; and
- G. condition of substrate.

(N) The classification of the building for the current report filing cycle, as determined by the following guidelines:

1. If there are no unsafe conditions and no conditions that are SWARMP, then the building shall be classified as safe;
2. If there is at least one unsafe condition, then the building shall be classified as unsafe.
3. If there is at least one condition that is SWARMP and there are no unsafe conditions, then the building shall be classified as SWARMP. A report may not be filed describing the same condition at the same location as SWARMP for two consecutive report filing cycles. The QEWI [shall] must certify that all of the conditions identified in the previous report as requiring repair have been corrected or the building shall be classified as unsafe;

(O) The seal and signature of the QEWI under whose direct supervision the critical examination was performed.

(4) *Report filing requirements.*

- (i) The requirements of this rule [shall]apply to all buildings with exterior walls or parts thereof that are greater than six stories in height, including the basement, but not the cellar, as defined in the building code, and regardless of the information in the Certificate of Occupancy. For buildings constructed on sloped sites that contain six (6) full stories plus one partial story where more than half the height of that partial story is above existing grade and/or adjacent to open areas (e.g., areaways, yards, ramps), [the wall containing that partial story] all walls shall be subject to facade inspection. Conditions requiring facade inspections may also include other structures that add to the height of the building as per section BC 504. The Commissioner shall determine which additional buildings and/or parts thereof are required to file in accordance with this rule.

- (ii) Buildings required to file a report [shall] must do so at least once during each five-year report filing cycle established by the Department. [The next complete report filing cycle, cycle seven, runs from February 21, 2010 to February 20, 2015.]
- (iii) An acceptable report [shall] must be filed within the applicable two-year filing window to avoid a late filing penalty[, except for cycle seven, during which the applicable filing window shall be:
 - (A) two years for buildings that meet the requirements of item (A) of subparagraph (v) of this paragraph,
 - (B) eighteen months for buildings that meet the requirements of item (B) of subparagraph (v) of this paragraph and
 - (C) twelve months for buildings that meet the requirements of item (C) of subparagraph (v) of this paragraph].
- (iv) The report [shall] must be submitted to the Department along with a filing fee as specified in the rules of the Department.
- [(v) Beginning with cycle seven, which runs from February 21, 2010 to February 20, 2015, an acceptable report for each building to which this rule applies is due in accordance with the following filing windows:
 - (A) For buildings located within a block ending with the number four (4), five (5), six (6), or nine (9), an acceptable report shall be filed within the filing window starting February 21, 2010 and ending February 21, 2012.
 - (B) For buildings located within a block ending with the number zero (0), seven (7), or eight (8), an acceptable report shall be filed within the filing window starting February 21, 2011 and ending August 21, 2012.
 - (C) For buildings located within a block ending with the number one (1), two (2), or three (3), an acceptable report shall be filed within the filing window starting February 21, 2012 and ending February 21, 2013.
- (v)] (vi) Staggered inspection cycle: For every five-year report filing cycle [thereafter] an acceptable report is due in accordance with the following filing windows:
 - (A) For buildings located within a block ending with the number four (4), five (5), six (6), or nine (9), an acceptable report [shall] must be filed within the two-year filing window starting February 21 of years ending in zero (0) and five (5) and ending February 21 of years ending in two (2) and seven (7).
 - (B) For buildings located within a block ending with the number zero (0), seven (7), or eight (8), an acceptable report [shall] must be filed within the two- year filing window starting February 21 of years ending in one (1) and six (6) and ending February 21 of years ending in three (3) and eight (8).

- (C) For buildings located within a block ending with the number one (1), two (2), or three (3), an acceptable report [shall] must be filed within the two-year filing window starting February 21 of years ending in two (2) and seven (7) and ending February 21 of years ending in four (4) and nine (9).

[(vi)] (vii) Initial reports for new buildings greater than six stories in height [shall] must be filed as follows:

- (A) The report [shall] must be filed five years from the date the first Temporary Certificate of Occupancy or Certificate of Occupancy was issued, if that five year date falls within the applicable filing window according to the last digit of the building's block number as provided in subparagraph (v) [or (vi)] of this paragraph; or
- (B) If five years from the date the first Temporary Certificate of Occupancy or Certificate of Occupancy was issued falls outside the applicable filing window according to the last digit of the building's block number as provided in subparagraph (v) [or (vi)] of this paragraph, then the initial report [shall] must be filed within the applicable two-year filing window for the next five-year cycle.

[(vii)] (viii) If contiguous zoning lots under single ownership or management contain multiple buildings that are considered one complex where at least two buildings of more than six stories in height fall into different filing windows as described above in items (A), (B) and (C) of [subparagraphs] subparagraph (v) [and (vi)] of this paragraph, the owner or management [shall] must choose one of the following report filing options:

- (A) An acceptable report for each building to which this rule applies may be filed separately according to the filing window corresponding to the last digit of that individual building's block number; or
- (B) The owner or his or her representative may choose one of the applicable filing windows and file a report for all of the buildings within that filing window, regardless of that building's individual filing window. The owner or his or her representative [shall] must inform the Department 180 days prior to the end of the assigned filing window if this option is chosen. If an owner or representative chooses this option, the owner or representative [shall] must continue to file under this same filing window for the duration of the owner's ownership of the property.

[(ix)] (viii) A report [shall] must be filed within sixty (60) days of the date on which the QEWI completed the critical examination (final inspection date), as defined in subparagraph (viii) of paragraph (2) of subdivision [(b)] (c) of this section. Failure to file a report within sixty (60) days of the completed critical examination requires a new critical examination.

[(x)] (ix) A report may not be filed more than one (1) year after completion of the close-up inspection.

- [(xi)] (x) If the report is not acceptable and is rejected by the Department, a revised report must be filed within forty-five (45) days of the date of the Department's rejection, after which the original file date will no longer be valid. If the report is not acceptable after two (2) rejections, a new initial filing fee as specified in the rules of the [department]Department is required. Failure to submit a revised report addressing the Department's objections within one (1) year of the initial filing requires a new critical examination, including a new close-up inspection.
- [(xii)] (xi) A subsequent report indicating revised conditions may be filed within a five-year report filing cycle to change a building's filing status or the recommended time frame for repairs of SWARMP or unsafe conditions for that cycle.
- [(xiii)] The Department retains the right to destroy any copy of reports not picked up by the owner within thirty (30) days after the date of its acceptance or rejection by the Department.]

(5) *Unsafe conditions.*

- (i) Upon filing a report of an unsafe condition with the Department, the owner of the building, his or her agent, or the person in charge of the building [shall] must immediately commence such repairs or reinforcements and any other appropriate measures such as erecting sidewalk sheds, fences, and safety netting as may be required to secure the safety of the public and to make the building's walls and appurtenances [thereto] conform to the provisions of the Administrative Code.
- (ii) All unsafe conditions [shall] must be corrected within [thirty (30)] ninety (90) days from the submission of the critical examination report.
- (iii) If, due to the scope of the repairs, the unsafe conditions cannot be corrected within the required 90 days, the QEWI must recommend a timeframe for repairs as noted in item (K) of subparagraph (iii) of paragraph (3) of subdivision (c). The owner of the building is responsible for ensuring that the conditions described in the critical examination report as unsafe are corrected and all actions recommended by the QEWI are completed within this timeframe. The owner must notify the Department of any deviation from the timeframe to make corrections as specified in QEWI's report. The subsequent report must include supporting documents from the QEWI justifying the request for a new time frame.
- [(iii)] (iv) Within two weeks after repairs to correct the unsafe condition have been completed, the QEWI [shall] must inspect the premises. The QEWI [shall obtain permit sign-offs as appropriate and shall] must promptly file with the Department a detailed amended report stating the revised report status of the building, along with a filing fee as specified in the rules of the Department and the owner must obtain permit sign-offs as appropriate. If the report is not acceptable and is rejected by the Department, a revised report must be filed within forty-five (45) days of the date of the Department's rejection. If the report is not acceptable after two (2) rejections, a new amended filing fee as specified in the rules of the [department]Department is required. Sheds or other protective measures [shall] must remain in place until an amended report is accepted; however, the QEWI may request permission for the removal of the shed upon submission of a signed

and sealed statement certifying that an inspection was conducted, the conditions were corrected and the shed is no longer required. Permission to remove the shed may be granted in the Commissioner's sole discretion.

[(iv)] (v) The Commissioner may grant an extension [of time] of up to ninety (90) days to complete the repairs required to remove an unsafe condition upon receipt and review of an initial extension application submitted by the QEWI, together with:

[(A)] (A) A copy of the original report for that report filing cycle and all required documentation submitted with such report;

[(B)] (A) Notice that the premises have been secured for public safety by means of a shed, fence, or other appropriate measures as may be required;

[(C)] (B) A copy of the contract indicating scope of work to remedy unsafe conditions;

[(D)] (C) The QEWI's estimate of length of time required for repairs;

[(E)] (D) A statement of all applicable permit requirements;

[(F)] (E) A notarized affidavit by the owner of the building that work will be completed within the time of the QEWI's stated estimate; and

[(G)] a) (F) A fee as specified in the rules of the Department.

Note: Financial considerations shall not be accepted as a reason for granting an extension.

[(v)] (vi) A further extension will be considered only upon receipt and review of a further extension application, together with notice of:

(A) An unforeseen delay (e.g., weather, labor strike) affecting the substantially completed work; or

(B) Unforeseen circumstances (e.g., fire, building collapse); or

(C) The nature of the hazard that requires more than ninety (90) days to remedy (e.g., new wall to be built); or

(D) Progress photos showing current facade repairs.

Note: Financial considerations shall not be accepted as a reason for granting an extension.

(6) *Conditions that are safe with a repair and maintenance program (SWARMP).*

(i) The owner of the building is responsible for ensuring that the conditions described in the critical examination report as SWARMP are [repaired] corrected and all actions recommended by the QEWI are completed within the time frame recommended by the QEWI, and are not left to deteriorate into unsafe conditions

[before the next critical examination]. It is the owner’s responsibility to notify the Department of any deviation from the timeframe to make corrections as specified in QEWI’s report. [Such notification shall be accompanied by] The subsequent report must include supporting documents from the QEWI justifying the request for a new time frame. [The department may approve or disapprove such request.]

- (ii) A report may not be filed describing the same condition and pertaining to the same location on the building as SWARMP for two consecutive report filing cycles.
- (iii) The QEWI [shall] must certify the correction of each condition reported as requiring repair in the previous report filing cycle, [or] report conditions that were reported as SWARMP in the previous report filing cycle as unsafe if not corrected at the time of the current inspection, or report corrections that were made in the previous cycle as unsafe if they need further or repeated repair at the time of the current cycle.

[(c)] (d) Civil Penalties.

- (1) *Failure to file.* An owner who fails to file the required acceptable inspection report shall be liable for a civil penalty of [one] two thousand dollars [(\$1,000)] (\$2,000) per year immediately after the end of the applicable filing window.
- (2) *Late filing.* In addition to the penalty for failure to file, an owner who submits a late filing shall be liable for a civil penalty of [two] five hundred [fifty] dollars [(\$250.00)] (\$500.00) per month, commencing on the day following the filing deadline of the assigned filing window period and ending on the filing date of an acceptable initial report.
- (3) In addition to the penalties provided in this section, an owner who fails to correct an unsafe condition shall be liable for a civil penalty [of one thousand dollars (\$1,000) per month, pro-rated daily,] as detailed in the table below, until the unsafe condition is corrected[, unless]. Unless the [commissioner] Commissioner grants an extension of time to complete repairs pursuant to this section, the penalties will be incurred as detailed in the table below. This penalty shall be imposed until receipt of an acceptable amended report by the [department]Department indicating the unsafe conditions were corrected, the sidewalk shed has been removed and the associated permits are signed off with the Department, including shed permits, or an extension of time is granted by the Commissioner.

| | <u>Base penalty</u> | <u>Plus</u> |
|---------------|---------------------|---|
| <u>Year 1</u> | <u>\$1000/month</u> | <u>NA</u> |
| <u>Year 2</u> | <u>\$1000/month</u> | <u>\$10/linear foot (l.f.)of shed/month</u> |
| <u>Year 3</u> | <u>\$1000/month</u> | <u>\$20/l.f. shed/month</u> |
| <u>Year 4</u> | <u>\$1000/month</u> | <u>\$30/l.f. shed/month</u> |
| <u>Year 5</u> | <u>\$1000/month</u> | <u>\$40/l.f. shed/month</u> |

~~(4)~~ Failure to correct SWARMP conditions. An owner who fails to correct a SWARMP condition reported as requiring repair in the previous report filing cycle and subsequently files the condition as unsafe shall be liable for a civil penalty of two thousand dollars (\$2,000).

~~[(4)]~~ (5) Challenge of civil penalty.

- (i) An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision by providing proof of compliance. Examples of such proof [shall] must include, but are not limited to, a copy of an acceptable initial report, a copy of the acceptable amended report, copies of approved extension of time requests while work was/is in progress or written proof from a QEWI that the unsafe conditions observed at the building were corrected and the violation was dismissed.
- (ii) Challenges [shall] must be made in writing within thirty (30) days from the date of service of the violation by the [department]Department and send to the office/unit of the [department]Department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the [department]Department.

~~[(d) Penalty]~~ (e) Full or partial penalty waivers; eligibility and evidentiary requirements. Owners may request a full or partial waiver of penalties assessed for violation of Article 302 of Title 28 of the Administrative Code, the [1968] New York City Building Code and/or rules enforced by the Department. Requests [shall] must be made in writing and [shall] must meet eligibility and evidentiary requirements as follows:

(1) Owner status.

- (i) [New] A new owner requesting a waiver due to change in ownership [shall] must submit proof of a recorded deed evidencing transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department, and only in one of the following circumstances:
 - ~~[(A)]~~ the new owner has obtained full tax exemption status from the New York City Department of Finance; or
 - (B) the new owner took title of the property as part of an economic development program sponsored by a government agency.
- (ii) ~~[(A)]~~ (A) A new owner of a [government-owned] property previously owned by a government entity requesting a waiver due to change in ownership [shall] must submit official documentation from the government entity affirming that the premises was entirely owned by the government entity during the period for which a waiver is requested.
- ~~[(B)]~~ (B) A new owner who receives a notice of violation for failure to comply with the requirements of this section or Article 302 of Title 28 of the Administrative Code that was issued to the property after the transfer of ownership must submit a recorded deed showing the date that the

property was acquired or transferred. The waiver period shall be from the date of the deed to the date of the violation issuance.

[(iii)] (ii) An owner may be granted a waiver of penalties upon submission of a copy of [a bankruptcy petition, together with proof that either the [department]Department or the New York City Law Department was served with a “Notice of Bar Date.”] an order signed by a bankruptcy court judge.

(iii) If a state of emergency is declared that prevents an owner from conducting an inspection, filing a report or correcting unsafe conditions, an owner may be granted a waiver of penalties.

(2) *Building status.* An owner requesting a waiver because the building was demolished [shall] must submit city or departmental records evidencing the demolition of the building prior to the filing deadline.

(f) *Posting of Conditions Certificate.* A conditions certificate issued by the Commissioner must be posted in a frame with a transparent cover in the lobby or vestibule of the subject building within thirty (30) days of issuance. The certificate must indicate the most recent condition of the building’s exterior walls and appurtenances.

**NEW YORK CITY LAW DEPARTMENT
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**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Governing Exterior Wall Inspections and Repairs

REFERENCE NUMBER: 2019 RG 089

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
Acting Corporation Counsel

Date: 11/20/19

**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 Rules Governing Exterior Wall Inspections and Repairs

REFERENCE NUMBER: DOB-123

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) The regulated entity will have 90 days to correct an unsafe condition.

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

November 20, 2019
Date