

NEW YORK CITY DEPARTMENT OF BUILDINGS

NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby amends Section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding Violation Classification and Certification of Correction.

This rule was first published on June 26, 2020 and a public hearing thereon was held on July 28, 2020.

Dated: 8/12/2020
New York, New York



Melanie E. La Rocca
Commissioner

Statement of Basis and Purpose

The rule updates the penalty amounts for violations related to several provisions of Chapter 33 of the Building Code in order to conform to DOB's methodology for calculating penalty amounts.

Specifically, the rule amends section 102-01 of Title 1 of the Rules of the City of New York to:

- Indicate that violations charged as "Aggravated I" are never eligible for Cure, Stipulation, or Mitigation even if there is a "Yes" in the corresponding column of the Buildings Penalty Schedule for that violation description;
- Add civil penalties for failure to submit a Tenant Protection Plan ("TPP") pursuant to Administrative Code § 28-120.1 as required in Local Law 106 and 118 of 2019;
- Amend existing penalties for failure to post and distribute Notice of TPP to reflect the preferred charging section;
- Remove an existing Class 1 penalty related to Administrative Code § 28-210.1;
- Amend existing penalties related to Administrative Code § 28-211.1 as required in Local Law 118 of 2019, doubling penalties related to the filing of documents that make material false statements;
- Amend existing Class 2 penalties related to miscellaneous provisions of the Administrative Code and New York City Building Code to match the statutory maximum for Class 2 penalties;
- Amend existing Class 2 penalties related to miscellaneous provisions of the Administrative Code and the Zoning Resolution of the City of New York to allow Cures for these penalties in accordance with an initiative by the Department of Small Business Services;
- Amend existing penalties related to several provisions of Chapter 33 of the Building Code in order to conform to DOB's methodology for calculating penalty amounts (DOB's methodology sets the "Aggravated I" penalty at two and a half times the Standard penalty, both the "Standard Default" and "Aggravated II" penalties at five times the Standard penalty, and the "Aggravated II Default" penalty at the statutory maximum);
- Remove Cures for two existing Class 1 penalties related to 1 RCNY § 3319-02(j)(3) and miscellaneous violations of the Energy Conservation Code's residential provisions because Class 1 penalties are not eligible for Cure; and
- Amend an existing Class 3 penalty related to § 28-104.8.4.3, which was incorporated into § 28-120.1.3 pursuant to Local Law 106 of 2019.

DOB's authority for this rule is found in Sections 643 and 1043(a) of the New York City Charter, Local Laws 106 and 118 of 2019, and Section 28-201.2 of the Administrative Code of the City of New York.

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. Subdivision (d) of section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (d) *Mitigated and zero penalties.* Mitigated or zero penalties are available in the following circumstances under the following conditions.
- (1) *Cure.*¹ An eligible violation may be cured by correction before the first scheduled hearing date at ECB. All violations that are designated as Class 3 violations are eligible for cure. Some, but not all, types of violations that are designated as Class 2 violations are eligible for cure. Those types of Class 2 violations that are eligible for cure will be indicated within the Buildings Penalty Schedule found below. In order to cure, a certificate of correction acceptable to the Department must be filed at the Department within forty days from the date of the Commissioner's order to correct set forth in the NOV. A cure constitutes an admission of the violation; dispenses with the need for a hearing at ECB; constitutes a predicate violation for subsequent violations; and, consistent with the provisions of § 28-204.2, and with the provisions of the Buildings Penalty Schedule, results in a zero penalty. A violation that has been charged as an Aggravated I or Aggravated II violation is never eligible for a cure, even if there is a "Yes" in the "Cure" column in the Buildings Penalty Schedule for that violation description.

¹ Section 28-204.2 of the Administrative Code provides for a zero penalty for Lesser violations that are corrected within the prescribed, or cure, period. For purposes of this rule, certain Major violations will also be treated as eligible for cure to the extent that Section 28-202.1 of the Administrative Code specifies no minimum penalty for such violations.

- (2) *Stipulation.* An eligible violation may be subject to stipulation where the Commissioner offers to the respondent a stipulation prior to or at a hearing to extend the time for compliance upon such terms and conditions as the Commissioner prescribes. Violations that are eligible for stipulation are indicated as such on the Buildings Penalty Schedule. The respondent must admit the violation subject to stipulation and agree to correct it and file an acceptable certification of correction with the Department. The stipulation may be signed and submitted to ECB either before the first scheduled hearing date at ECB or else on the first scheduled hearing date but prior to any actual hearing on that date, in which case it is considered a pre-hearing stipulation, or may be entered into at the first ECB hearing in which case it is considered a hearing stipulation. A reduced penalty will be imposed in connection with a pre-hearing stipulation in an amount indicated for the charge in question in the Buildings Penalty Schedule. Specifically, the penalty imposed for that violation will be half of the penalty amount (rounded to the nearest dollar) of the penalty amount that would otherwise have been imposed at a hearing for that particular violation. In connection with a stipulation entered into at a hearing, a hearing penalty will be imposed in an amount indicated for the charge in question in the Buildings Penalty Schedule. A stipulation, whether a pre-hearing stipulation or a hearing stipulation, gives the respondent seventy-five days from the first scheduled hearing date within which to correct the violation and file a certificate of correction, failing which any reduced penalty that may have been imposed in connection with a pre-hearing stipulation will be adjusted to the standard hearing penalty set forth in the Buildings Penalty Schedule. A stipulation is effective only if it is approved by ECB. A pre-hearing stipulation dispenses with the need for a hearing at ECB. No stipulation shall take effect unless, in the case of a pre-hearing stipulation, it is offered by the Department prior to the first scheduled hearing date, signed by respondent prior to the first scheduled hearing date and approved by ECB in writing, or unless, in the case of a hearing stipulation, it is offered by the Department at the hearing, accepted by the respondent at that hearing, and is approved in writing by ECB. A violation that has been charged as an Aggravated I or Aggravated II violation is never eligible for a stipulation, even if there is a "Yes" in the "Stipulation" column in the Buildings Penalty Schedule for that violation description.

- (3) *Mitigation.* An eligible violation may be subject to mitigation where the respondent proves at the hearing that the condition was corrected prior to the first scheduled hearing date at ECB. Violations that are eligible for mitigation are indicated as such on the Buildings Penalty Schedule. A penalty is imposed on mitigations in accordance with the Buildings Penalty Schedule. If a mitigated penalty is imposed, that penalty will be half of the penalty amount of the penalty amount that would otherwise have been imposed at a hearing for that particular violation. An acceptable certificate of correction must thereafter be filed at the Department. A violation that has been charged as an Aggravated I or Aggravated II violation is never eligible for mitigation, even if there is a "Yes" in the "Mitigation" column in the Buildings Penalty Schedule for that violation description.

§ 2. Penalties for violations of 1 RCNY 3319-02 (j)(3), 27-Misc, 28-Misc, BC-Misc, 28-105.1, 28-104.8.4.3, 27-2009.2, 28-210.1, 28-211.1, 28-301.1, 28-303.7, BC 3307.7, BC 3319.8.4.2, BC 3319.8.6, ZR 32-64, ZR 32-652, ZR 32-653, ZR-Misc., Misc. – ZR Misc. – Title 28, and ECC – R-Misc. in subdivision (k) of section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York are amended to read as follows:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default – Max Penalty
1 RCNY 3319-02 (j)(3)	Class 1	Lift director failed to conduct/record meeting (pre-shift or subsequent).	[Yes] <u>No</u>	Yes	\$5,000	Yes	\$25,000	\$12,500	\$25,000	\$25,000	\$25,000
27-Misc, 28-Misc, BC-Misc	Class 2	Miscellaneous violations.	Yes	Yes	\$1,250	Yes	\$6,250	\$3,125	[\$12,500] <u>\$10,000</u>	\$6,250	\$10,000
28-105.1	Class 2	Failure to obtain a temporary construction permit prior to installation/use of temporary construction equipment.	Yes	No	\$1,250	Yes	\$6,250	\$3,125	[\$12,500] <u>\$10,000</u>	\$6,250	\$10,000

[28-104.8.4.3]	[Class 3]	[Failure to post or distribute a notice meeting requirements 28-104.8.4.3]	[No]	[No]	[\$500]	[Yes]	[\$500]	[\$500]	[\$500]	[\$500]	[\$500]
[27-2009.2]	[Class 2]	[Failure to post or distribute Notice of TPP.]	[No]	[No]	[\$1,250]	[No]	[\$6,250]	[\$3,125]	[\$10,000]	[\$6,250]	[\$10,000]
[28-210.1]	[Class 1]	[1- or 2-family residence converted to or maintained as a dwelling for more than the number of families legally authorized by the C of O or official records – Less than three additional dwelling units]	[No]	[No]	[\$2,500]	[No]	[\$12,500]	[\$6,250]	[\$25,000]	[\$12,500]	[\$25,000]
28-211.1	Class 1	Filed a certificate, form, application etc., containing a material false statement(s).	No	No	[\$5,000] <u>\$10,000</u>	No	\$25,000	[\$12,500] <u>\$25,000</u>	\$25,000	\$25,000	\$25,000
28-211.1	Class 1	Filed a certificate of correction or other related materials containing material false statement (s).	No	No	[\$5,000] <u>\$10,000</u>	No	\$25,000	[\$12,500] <u>\$25,000</u>	\$25,000	\$25,000	\$25,000
28-301.1	Class 2	Failure to maintain sign in accordance w Tit.27; Tit.28; ZR; RCNY.	[No] <u>Yes</u>	Yes	\$1,250	Yes	\$6,250	\$3,125	\$10,000	\$6,250	\$10,000

28-303.7	Class 2	Failure to file a complete boiler inspection report.	[No] <u>Yes</u>	No	\$625	No	\$3,125	\$1,563	\$6,250	\$3,125	\$10,000
BC 3307.7	Class 2	Job site fence not constructed or maintained pursuant to section.	Yes	No	\$1,000	Yes	[\$4,000] <u>\$5,000</u>	[\$2,000] <u>\$2,500</u>	[\$8,000] <u>\$10,000</u>	[\$4,000] <u>\$5,000</u>	\$10,000
BC 3319.8.4.2	Class 1	Failure to provide time schedule indicating erection, jumping, climbing or dismantling of crane.	No	No	\$2,000	No	[\$6,500] <u>\$10,000</u>	[\$3,125] <u>\$5,000</u>	[\$12,500] <u>\$25,000</u>	[\$6,250] <u>\$10,000</u>	\$25,000
BC 3319.8.6	Class 1	No meeting log available.	No	No	\$2,000	No	[\$6,250] <u>\$10,000</u>	[\$3,125] <u>\$5,000</u>	[\$12,500] <u>\$25,000</u>	[\$6,250] <u>\$10,000</u>	\$25,000
ZR 32-64	Class 2	Sign(s) in specified C District exceed(s) surface area restrictions.	[No] <u>Yes</u>	Yes	\$1,250	Yes	\$6,250	\$3,125	\$10,000	\$6,250	\$10,000
ZR 32-652	Class 2	Sign in specified C District extends beyond street line limitation.	[No] <u>Yes</u>	Yes	\$1,250	Yes	\$6,250	\$3,125	\$10,000	\$6,250	\$10,000
ZR 32-653	Class 2	Prohibited sign on awning, canopy, or marquee in C District.	[No] <u>Yes</u>	Yes	\$1,250	Yes	\$6,250	\$3,125	\$10,000	\$6,250	\$10,000

ZR-Misc.	Class 2	Misc. sign violation under the Zoning Resolution.	[No] <u>Yes</u>	Yes	\$1,250	Yes	\$6,250	\$3,125	\$10,000	\$6,250	\$10,000
Misc. – ZR Misc. – Title 28	Class 2	Misc. outdoor sign violation of ZR and/or Building Code.	[No] <u>Yes</u>	No	\$2,500	No	\$10,000	[\$6,250] <u>\$6,250</u>	\$10,000	\$10,000	\$10,000
ECC – R-Misc.	Class 1	Miscellaneous violation of Energy Conservation Code residential provisions.	[Yes] <u>No</u>	Yes	\$1,600	No	\$8,000	\$4,000	\$16,000	\$8,000	\$25,000

§ 3. Subdivision (k) of section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding new penalties for violations of 28-120.1 and 28-120.1.3 in alphanumeric order to read as follows:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default – Max Penalty
<u>28-120.1</u>	<u>Class 1</u>	<u>Failure to file a required Tenant Protection Plan</u>	<u>No</u>	<u>No</u>	<u>\$10,000</u>	<u>No</u>	<u>\$25,000</u>	<u>\$25,000</u>	<u>\$25,000</u>	<u>\$25,000</u>	<u>\$25,000</u>
<u>28-120.1.3</u>	<u>Class 2</u>	<u>Failure to post or distribute Notice of TPP meeting requirements.</u>	<u>No</u>	<u>No</u>	<u>\$625</u>	<u>Yes</u>	<u>\$3,125</u>	<u>\$1,563</u>	<u>\$6,250</u>	<u>\$3,125</u>	<u>\$10,000</u>

<u>28-120.1.3</u>	<u>Class 2</u>	<u>Failure to post and distribute Notice to occupants of TPP.</u>	<u>No</u>	<u>No</u>	<u>\$1,250</u>	<u>No</u>	<u>\$6,250</u>	<u>\$3,125</u>	<u>\$10,000</u>	<u>\$6,250</u>	<u>\$10,000</u>
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