

1 RCNY §103-04

CHAPTER 100

Subchapter C Maintenance of Buildings

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

(a) *Definitions.*

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.

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 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 be completed in accordance with the provisions of paragraph (3) of subdivision (b) of this section.

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

Qualified Exterior Wall Inspector (hereinafter "QEWI"). A qualified exterior wall inspector as defined in section 101-07 of the rules of the 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. 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.

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. 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 be reported as an unsafe condition.

(b) *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 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 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 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 design an inspection program for the specific building to be inspected, which shall 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 façade's specific exposure to environmental conditions and the presence of specific details and appurtenances. Consideration shall be given to the façade's history of maintenance and repairs as described in previous reports and submittals to the 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, 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 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 from a scaffold or other observation platform (a "close-up inspection") 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 along a path from grade to top of an exterior wall on a street front using at least one scaffold drop or other observation platform configuration, including all setbacks.
- (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 a professional standard of care to assess the building's condition, including splitting or fracturing of terra cotta on buildings, cracking of masonry and brick work in brick faced buildings, loosening of metal anchors and supports, water entry, movement of lintel angles, and shall ascertain the cause of these and such other conditions detected. The QEWI shall order any special or additional inspections and/or tests that may be required to support investigations and to determine the causes of any defects.

The removal of portions of the façade 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 be taken and/or sketches made 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 immediately notify the Department and the owner of the building by letter or fax, in a form and manner as provided by the Department.
- (viii) Completion of a critical examination shall mean 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, 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 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, even if it shares a Block and Lot number with other structures.
- (ii) Technical information in the report shall adhere to and follow the sequence and the labeling of the report requirements as listed in subparagraph (iii) of this paragraph, and shall be provided on such forms and in such format as the Department shall require. Additional information may be provided. All letters (A – O) shall be listed in the report. If a requirement is not applicable, this shall be indicated on the report under the relevant letter.
- (iii) The report shall include an executive overview that shall consist 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 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, 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;
 - (D) A detailed description of any settlements, repairs, or revisions to exterior enclosures since the previous report;
 - (E) A detailed description of the procedures used in making the critical examination;

- (F) A detailed description of:
1. The extent and location of all physical examinations performed;
 2. The names, addresses, telephone numbers, and license or registration numbers for riggers 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;
- (G) A description and classification 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 façade. 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. 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 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) 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;
- (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 be included and discussed:
1. Work permit numbers relating to façade repairs, including permits for sheds;
 2. Job numbers, status and sign-off dates for any façade related jobs, where applicable; and
 3. Violation numbers of any open Environmental Control Board (“ECB”) façade violations and the status of the repairs of the conditions cited in the ECB violations;
- (K) Detailed recommendations for repairs or maintenance of SWARMP items, including:
1. The recommended time frame for such repairs or maintenance to be performed, which shall indicate the date by which the work shall be performed (MM/YYYY) to prevent the conditions from becoming unsafe and not the date on which work is planned or scheduled;
 2. Time frames of less than one (1) year, “ASAP,” or “immediately,” shall 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 be indicated;
- (M) 1. 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).
- (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 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 shall be subject to façade inspection. Conditions requiring façade 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 do so 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 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 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.
- (vi) 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 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 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 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).
- (vii) Initial reports for new buildings greater than six stories in height shall be filed as follows:
 - (A) The report shall 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 be filed within the applicable two-year filing window for the next five-year cycle.

- (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 (v) and (vi) of this paragraph, the owner or management shall 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 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 continue to file under this same filing window for the duration of the owner's ownership of the property.
 - (ix) A report shall 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) of this section. Failure to file a report within sixty (60) days of the completed critical examination requires a new critical examination.
 - (x) A report may not be filed more than one (1) year after completion of the close-up inspection.
 - (xi) 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 initial filing fee as specified in the rules of the 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) A subsequent report indicating revised conditions may be filed within a five-year report filing cycle to change a building's filing status 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 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 be corrected within thirty (30) days from the submission of the critical examination report.
 - (iii) Within two weeks after repairs to correct the unsafe condition have been completed, the QEWI shall inspect the premises. The QEWI shall obtain permit sign-offs as appropriate and shall 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. 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 is required. Sheds or other protective measures shall 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) 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 copy of the original report for that report filing cycle and all required documentation submitted with such report;
 - (B) 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) A copy of the contract indicating scope of work to remedy unsafe conditions;
 - (D) The QEWI's estimate of length of time required for repairs;

- (E) A statement of all applicable permit requirements;
- (F) 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 fee as specified in the rules of the Department.

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

- (v) 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).

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.*

- (i) The owner of the building is responsible for ensuring that the conditions described in the critical examination report as SWARMP are repaired 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 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 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.

(c) 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 thousand dollars (\$1,000) 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 hundred fifty dollars (\$250.00) 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, until the unsafe condition is corrected, unless the commissioner grants an extension of time to complete repairs pursuant to this section. This penalty shall be imposed until receipt of an acceptable amended report by the department indicating the unsafe conditions were corrected or an extension of time is granted.
- (4) 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 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 be made in writing within thirty (30) days from the date of service of the violation by the department and send to the office/unit of the department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the department.

(d) Penalty waivers; eligibility and evidentiary requirements.

Owners may request a 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 be made in writing and shall meet eligibility and evidentiary requirements as follows:

- (1) Owner status.
 - (i) New owner requesting a waiver due to change in ownership shall 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 new owner of a government-owned property requesting a waiver due to change in ownership shall 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.
 - (iii) 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 or the New York City Law Department was served with a "Notice of Bar Date."
- (2) Building status. An owner requesting a waiver because the building was demolished shall submit city or departmental records evidencing the demolition of the building prior to the filing deadline.