

**ARTICLE 305  
RETAINING WALLS, PARTITION FENCES AND  
OTHER SITE STRUCTURES**

**§28-305.1 Retaining walls, partition fences and other site structures.** In addition to the requirements set forth in chapter 33 of the New York city building code, the responsibility for maintaining and repairing retaining walls, partition fences and other site structures shall be in accordance with sections 28-305.1.1, 28-305.1.2, and 28-305.4 of this code.

**§28-305.1.1 Structures located on the lot line of adjacent properties and partially on both properties.** The owners of adjacent properties shall be responsible jointly for the proper maintenance and repair of retaining walls, partition fences and other site structures, or portions thereof, that are located along the common lot line and on both their properties; and each such owner shall be responsible for one-half of the costs of maintaining and repairing such fences, retaining walls and other site structures, or such portions thereof. Where an owner elects to remove temporarily a retaining wall or partition fence that is required to support a grade differential between the two properties, or for any other reason is required by this code, such owner shall protect the adjacent property, shall not impair its safe use, and shall replace the retaining wall or partition fence at his or her own cost. Refer to chapter 33 of the New York city building code for additional requirements during construction and demolition operations.

**§28-305.1.2 Structures located entirely on one property.** Where such retaining walls, partition fences or other site structures, or portions thereof, are located entirely on one property, the owner of such property shall be wholly responsible for the proper maintenance and repair of the retaining wall, partition fence or other site structure. If, however, the proper maintenance and/or repair of such retaining wall, partition fence or other site structures requires access to the adjoining property, the owner of such adjoining property shall allow such access. Refer to chapter 33 of the New York city building code for additional requirements during construction and demolition operations.

**§28-305.2 Retaining walls required.** Hereafter, when an owner elects to set his or her grade either higher or lower than the grade of an adjoining property at the property line, such owner shall erect, maintain and repair a retaining wall of sufficient height, structure and foundation to support such grade differential, and with proper drainage, in accordance with this code, such that the adjacent property is not impacted, and shall do so at the sole expense of such owner and entirely on the property of such owner without access to the adjoining property.

**§28-305.3 Special agreement.** Nothing in this article shall be construed to prevent the owners of adjacent properties from making or enforcing by private action special agreements with respect to maintenance or repair of retaining walls, partition fences and other site structures or access to adjoining property for such purpose.

**§28-305.4 Maintenance, inspection and repair of retaining walls.** Maintenance, inspection and repair of retaining walls shall comply with sections 28-305.4.1 through 28-305.4.8.

**§28-305.4.1 Definition.** As used in this article, the following term shall have the following meaning:

**RETAINING WALL.** A wall that resists lateral pressures and limits lateral displacement caused by soil, rock, water or other materials, except that basement and vault walls that are part of a building, underground structures, including but not limited to utility vault structures, tunnels, transit stations and swimming pools, shall not be considered retaining walls.

**§28-305.4.2 Owner's responsibility.** Owners of retaining walls with a height of ten feet or more and fronting a public right-of-way shall comply with the requirements of this section. For the purposes of this section, the height of a retaining wall shall be the distance from the top of the ground in front of the wall to the top of the wall stem, or wall step for stepped walls, including any parapets or fencing capable of retaining material.

**§28-305.4.3 Condition assessment requirements.** A condition assessment of a retaining wall shall be conducted at periodic intervals as set forth by rule of the commissioner, but such assessment shall be conducted at least once every five years. The commissioner may establish staggered assessment cycles for retaining walls required to comply with this section.

**§28-305.4.3.1 Registered design professional.** The condition assessment shall be conducted on behalf of the owner by or under the direct supervision of a registered design professional with appropriate qualifications as prescribed by the department.

**§28-305.4.3.2 Department rules.** The condition assessment shall be conducted in accordance with rules promulgated by the commissioner.

**§28-305.4.4 Report of condition assessment.** A report of condition assessment shall be submitted to the department in accordance with sections 28-305.4.4.1 and 28-305.4.4.2.

**§28-305.4.4.1 Submission deadlines.** Except as otherwise provided in section 28-305.4.6, the registered design professional shall submit a written report to the commissioner within 60 days of completing the assessment, but not more than five years following submission of the preceding report of assessment, certifying the results of the assessment.

**§28-305.4.4.2 Contents.** The report shall certify the results of the assessment as either safe, safe with minor repair or safe with repair and/or engineering monitoring, as prescribed by rules of the department. The report shall clearly document the condition of the retaining wall and shall include a record of all significant deterioration, potentially unsafe conditions of the wall or affecting the wall, and movement observed. The report must be certified by the registered design professional.

**§28-305.4.5 Fees.** Every owner of a retaining wall shall pay to the department a report filing fee for each report of condition assessment in the amount prescribed by this code.

**§28-305.4.6 Immediate notice of unsafe condition.** Whenever the registered design professional under whose supervision the inspection is performed learns of an unsafe condition through a condition assessment of a retaining wall, such person shall notify the owner and the department of such condition immediately by calling 311 and by written notification to the department.

**§28-305.4.7 Repair of unsafe condition.** Upon the notification to the department of an unsafe condition, the owner or the owner's agent shall immediately commence such repairs, reinforcements or other measures as may be required to secure public safety.

**§28-305.4.7.1 Permit.** The owner or the owner's agent shall obtain a permit within the time set forth in the rules of the department in order to correct the unsafe condition, after securing public safety as provided above.

**§28-305.4.7.2 Monitoring.** The owner or the owner's agent shall monitor the protection of public safety until the unsafe condition is remedied.

**§28-305.4.7.3 Reinspection.** The owner or the owner's agent shall reinspect the retaining wall and file an amended report within two weeks after the repairs have been completed certifying that the unsafe conditions of the retaining wall have been corrected.

**§28-305.4.7.4 Extension.** The commissioner may grant an extension of time of up to 90 days from the date of the application for an extension to complete the repairs required to correct an unsafe condition upon receipt and review of an initial extension application submitted by the registered design professional together with such additional documentation as may be prescribed by rule.

**§28-305.4.7.5 Further extension.** The commissioner may grant further extensions of time to complete the repairs required to remove an unsafe condition upon receipt and review of an application for a further extension submitted by the registered design professional together with such further documentation as may be prescribed by rule.

**§28-305.4.8 Safe with repair and/or engineering monitoring.** A retaining wall or any part thereof that may pose a potential danger to persons or property, but does not require immediate action shall be rated safe with repair and/or engineering monitoring. This condition requires further investigation and timely remedial action to prevent its deterioration into an unsafe condition. A registered design professional shall be responsible for appropriately monitoring the wall until the repair is completed.

**§28-305.4.8.1 Safe with repair and/or engineering monitoring for two cycles.** The registered design professional shall not file a report of safe with repair and/or engineering monitoring for the same retaining wall for two consecutive filing periods unless the second such report is accompanied by his or her professional certification attesting to the correction of all conditions identified in the prior report as requiring repair.

**§28-305.5 Removal of retaining structures.** Any retaining structure, standing partly on the land of each owner, may be removed by either owner when the original reason for the erection of such retaining structure ceases to exist. Notification shall be provided to the adjoining property owner.