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# A Bird's Eye View Of NYC's New Parapet Inspection Law

By Benjamin Fox Tracy

Despite its latest initiative to remove vast scaffolding that covers much of New York City, the New York City Department of Buildings recently enacted a new rule requiring building owners to conduct yearly inspections of parapets that will likely result in the installation of even more scaffolding throughout the five boroughs.

In 2021, Local Law 126 added Section 28-301.1.1 of the New York City Administrative Code, which went into effect on Nov. 7, 2022. This section requires building owners to conduct annual inspections of the building's parapet in accordance with the DOB's rules.

Pursuant to its authority under the New York City Charter, the DOB subsequently adopted Section 103-15 of the DOB's rules to clarify the requirements of the parapet inspections and resulting reports.

In the event the inspection reveals any potential unsafe conditions, the building owner must immediately notify the DOB and immediately install protections. Those protections include sidewalk sheds, fences and safety netting. The building owner must maintain these protections until the unsafe condition is remediated.

These requirements are like the ones necessary for complying with the requirements of New York City's Facade Inspection and Safety Program when a facade is found to be either unsafe or safe, with a repair and maintenance program.

Because building owners not subject to FISP requirements likely have not had their parapet walls inspected previously, these new inspections will likely result in many older buildings finding unsafe conditions that require the installation of a sidewalk shed.

Section 103-15 of the rules goes into effect on Jan. 1, 2024, and the deadline for compliance with its requirements is Dec. 31, 2024.

Starting on Jan. 1, every building owner must have an annual observation of the building's parapet, pursuant to Section 28-301.1.1 of the Code. Section 103-15(b) of the rules defines an observation as a "visual examination of a parapet, cornice and other parapet appurtenances conducted to determine their stability and identify any potentially hazardous conditions."

Section 103-15(a) clarifies that a parapet is the "part of any wall entirely above the roof line", a cornice is a "projecting horizontal member or assembly that crowns a wall," and an appurtenance is "any structure attached to or supported by a parapet."

Section 103-15(b) provides that all buildings with parapets fronting the public right of way, regardless of height, are subject to the observation requirements.

A public right of way is defined as a public street, avenue, sidewalk, roadway or any other public place or public way. This rule appears to not require inspections of parapets adjacent to private areas not accessible to the public, like yards or alleyways.

Buildings that are detached one- or two-family homes or buildings with a fence or other barrier preventing access to the exterior wall are not required to comply with the observation requirements. Owners of these excluded buildings should

consider generating a one-time report by a qualified person noting that the building is not required to comply with the observation requirements.

Unlike FISP, this parapet inspection is not just limited to buildings that are higher than six stories. This new inspection requirement applies to all buildings with parapets, creating circumstances where countless buildings not previously subject to formal inspections will likely have to install sidewalk sheds after discovering unsafe conditions with their parapets.

Per Section 103-15(b)(1), only a person competent to inspect parapets may conduct the parapet inspections. The rule provides an illustrative, but not exhaustive, list of competent persons including bricklayers, building superintendents, handymen, masons or member of a related construction trade, architect, or engineer.

The list demonstrates that a competent person likely must either be a licensed design professional or a person who regularly deals with parapet walls in his or her profession. Building owners may rely on their own superintendents and handymen to conduct the observation.

This should be a relief to building owners, because inspections pursuant to FISP may only be done by costly registered architects or professional engineers.

The person conducting the observation must perform a close-up inspection of the parapet, which may be conducted from a fire escape or roof. The inspector is required to determine:

- That the parapet is plumb, i.e., straight, by a horizontal distance within one-eighth of its cross-sectional thickness in any direction;
- Whether there is excessive deterioration, which includes, but is not limited to, displacement, horizontal or diagonal cracks, missing or loose bricks or coping stones, deteriorating mortar joints, i.e., spaces between bricks filled with mortar or grout, spalling, i.e., natural deterioration of concrete, or rot; and
- A determination that appurtenances such as telecommunications equipment, railings, roof access rails, gooseneck ladders, i.e., ladders with a curved section of handrail that terminates at the top of a roof or parapet, and handrail attachments for fire escapes, and signs, have been installed and maintained in stable condition.

Building owners should ensure that any inspector is provided with the necessary safety equipment to avoid liabilities arising from injuries suffered during the inspection pursuant to Sections 240 and 241 of the Labor Law.

The inspector must prepare a report of the observation, or the building owner may prepare a report of the observation provided the owner first consults with the inspector. The report must include the following:

- The address and any other associated address for the building, which likely includes the address of the managing agent, if applicable;
- The name, mailing address and telephone number of the building owner or, alternatively, the name, mailing address, telephone number, and position or title of a principal of the owner;
- The name of the inspector, which shall include the mailing address, telephone number, affiliation with the building or owner, and business name, if the inspector is not the building owner;
- The dates of the observation;
- The location plan of the parapets observed;
- The construction of the parapet, including, but not limited to material, height and thickness;
- General conditions noted during the observation, whether any unsafe conditions were observed, and proposed actions to remedy unsafe conditions, if any;
- Any repairs made to the parapet since the previous report; and
- Dated photographs documenting the conditions during the observation.

Owners are required to maintain these reports for at least six years and must make such reports available to the DOB upon request. Owners are not required to submit reports to the DOB absent a request by the DOB.

Attorneys representing building owners should be careful to diligently maintain these records and to ensure such reports are readily available should the DOB make a request for them. Failure to do so will cause owners to be subject to fines, violations and appearances before New York City's Office of Administrative Trials and Hearings.

Although the DOB has not updated its fine schedule to account for this new rule, the financial penalties for noncompliance likely will range from \$800 to \$10,000.

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