

CHAPTER 3

MAINTENANCE OF BUILDINGS

ARTICLE 301 GENERAL

§28-301.1 Owner's responsibilities. All buildings and all parts thereof and all other structures shall be maintained in a safe condition. All service equipment, means of egress, materials, devices, and safeguards that are required in a building by the provisions of this code, the 1968 building code or other applicable laws or rules, or that were required by law when the building was erected, altered, or repaired, shall be maintained in good working condition. Whenever persons engaged in building operations have reason to believe in the course of such operations that any building or other structure is dangerous or unsafe, such person shall forthwith report such belief in writing to the department. The owner shall be responsible at all times to maintain the building and its facilities and all other structures regulated by this code in a safe and code-compliant manner and shall comply with the inspection and maintenance requirements of this chapter.

ARTICLE 302 MAINTENANCE OF EXTERIOR WALLS

§28-302.1 General. A building's exterior walls and appurtenances thereof shall be maintained in a safe condition. All buildings greater than six stories shall comply with the maintenance requirement of this article.

Exception: The requirements imposed by this article shall not apply to any part of an exterior wall that is less than 12 inches (305 mm) from the exterior wall of an adjacent building.

§28-302.2 Inspection requirements. A critical examination of a building's exterior walls and appurtenances thereof shall be conducted at periodic intervals as set forth by rule of the commissioner, but such examination shall be conducted at least once every five years. No later than January 1, 2009 the commissioner shall by rule establish staggered inspection cycles for buildings required to comply with this section. The initial examination for a new building shall be conducted in the fifth year following the erection or installation of any exterior wall and/or appurtenances as evidenced by the issuance date of a temporary or final certificate of occupancy or as otherwise prescribed by rule.

1. Such examination shall be conducted on behalf of the building owner by or under the direct supervision of a registered design professional with appropriate qualifications as prescribed by the department.
2. Such examination shall include a complete review of the most recently prepared report and an inspection.
3. Such examination shall be conducted in accordance with rules promulgated by the commissioner.

§28-302.3 Immediate notice of unsafe condition. Whenever a registered design professional learns of an unsafe condition

through a critical examination of a building's exterior walls and appurtenances thereof, such person shall notify the owner and the department immediately in writing of such condition.

§28-302.4 Report of critical examination. The registered design professional shall submit a written report to the commissioner within 60 days of completing the critical examination, but not more than five years following submission of the preceding report of critical examination, certifying the results of such critical examination as either safe, unsafe or safe with a repair and maintenance program. The report shall clearly document the condition of the exterior walls and appurtenances thereof and shall include a record of all significant deterioration, unsafe conditions and movement observed as well as a statement concerning the watertightness of the exterior surfaces. Such report must be professionally certified by such registered design professional.

§28-302.5 Repair of exterior walls, unsafe condition. Upon the notification to the department of an unsafe condition, the owner, the owner's agent or the person in charge shall immediately commence such repairs, reinforcements or other measures as may be required to secure public safety and to make the building's exterior walls or appurtenances thereof conform to the provisions of this code.

1. All unsafe conditions shall be corrected within 30 days of filing the critical examination report.
2. The registered design professional shall reinspect the premises and file an amended report within two weeks after the repairs have been completed certifying that the unsafe conditions of the building have been corrected.
3. The commissioner may grant an extension of time of up to 90 days 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.
4. 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.

§28-302.6 Safe condition with a repair and maintenance program. The registered design professional shall not file a report of a safe condition with a repair and maintenance program for the same building 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.

**ARTICLE 303
PERIODIC BOILER INSPECTIONS**

§28-303.1 General. Periodic boiler inspections shall be performed in accordance with this article.

§28-303.2 Annual inspection. Except as otherwise provided in this article, all boilers as defined in section 204 of the New York state labor law, excepting those boilers listed in subdivision five of such section of such labor law, shall be inspected at least once a year by a qualified department boiler inspector or an approved agency. Such inspections shall also include the chimney connectors. All individuals who perform periodic inspections pursuant to this article shall be qualified under section 204 of the New York state labor law and the rules promulgated by the commissioner of labor or the commissioner of buildings.

§28-303.2.1 Internal inspection required. When the construction of the boiler allows, an internal inspection shall also be performed.

§28-303.3 Inspection of high-pressure boilers. Each owner of a high-pressure boiler, as defined in this code, may choose to have the annual boiler inspection conducted by the department or by a qualified boiler inspector in the employ of a duly authorized insurance company.

§28-303.4 Staggered inspection cycles. The commissioner may by rule establish staggered inspection cycles for buildings required to comply with this article.

§28-303.5 Repair of defects. The owner of each boiler that is subject to periodic inspection shall correct any defects identified in the annual boiler inspection.

§28-303.6 Owner's annual statement. The owner of each boiler that is subject to periodic inspection shall file an annual written statement with the commissioner including:

1. The location of each boiler.
2. Whether the owner, agent, or lessee has had the boiler inspected by a qualified boiler inspector in the employ of a duly authorized insurance company or other qualified inspector in accordance with the requirements of this article, setting forth the name and address of the insurance company or other qualified inspector, the date of inspection, and the policy number covering the boiler.

§28-303.7 Report of inspection. A signed copy of the report of each boiler inspection shall be filed with the owner's annual statement, on such forms and in such manner as required by the commissioner. The report shall include a certification that identified defects have been corrected. The statement shall be filed within 30 days after installation of a boiler. Thereafter, it shall be filed as set forth in this article and in rules.

§28-303.8 Removal or discontinuance notice. The owner of a boiler that is removed or discontinued from use shall file a written notice of such removal or discontinuance with the commissioner within 30 days of the date of removal or discontinuance.

§28-303.9 Additional inspections. In addition to the inspections required by this article, the commissioner may make such additional inspections as required to enforce the provisions of this code.

§28-303.10 Fees. Every owner of a boiler in use and inspected by a qualified boiler inspector in the employ of a duly authorized insurance company shall pay to the department an annual fee for each boiler in the amount prescribed by this code to cover the city's administrative and supervisory costs. The fee shall be payable at the time of the filing of the owner's annual statement. No fee shall be charged for additional inspections made by the department pursuant to section 28-303.9.

**ARTICLE 304
PERIODIC INSPECTION OF ELEVATORS**

§28-304.1 General. Every new and existing elevator or conveying system shall be inspected and tested in accordance with the schedule set forth in this article.

§28-304.2 Elevators, escalators, moving walkways, material lifts, vertical reciprocating conveyors (VRC) and dumbwaiters. Elevators, escalators, moving walkways, material lifts, VRC's and dumbwaiters shall be inspected and tested in accordance with the schedule set forth in Table N1 of ASME 17.1 as referenced in chapter 35 and as may be modified in chapter 30 and appendix K of the New York city building code.

Exception: Elevators located in owner-occupied one-family, two-family or multiple-family dwellings that service only the owner-occupied dwelling unit and that are not occupied by boarders, roomers or lodgers, and elevators located within convents and rectories that are not open to non-occupants on a regular basis are not subject to periodic inspection requirement of such reference standard.

§28-304.3 Chair lifts and stairway chair lifts. Chair lifts and stairway chair lifts shall be inspected and tested at intervals not exceeding one year.

§28-304.4 Amusement devices. Amusement devices shall be inspected and tested at intervals not exceeding six months except that for seasonally operated amusement devices, the commissioner may extend the periodic inspection and test for an additional two months.

§28-304.5 Frequency of inspection and testing. Elevators and other conveying systems may be subject to more frequent inspection and testing as the commissioner finds necessary to protect public safety.

§28-304.6 Inspection and testing process. All devices shall be inspected and tested in accordance with sections 28-304.6.1 through 28-304.6.6

§28-304.6.1 Inspection and testing entities. The required periodic inspections shall be made by the department, except that one inspection and test for elevators and escalators shall be made between January first and December thirty-first of each year on behalf of the owner by an approved agency in accordance with this code and with rules promulgated by the commissioner. Required inspections and tests performed on behalf of the owner shall be performed by an approved agency in accordance with rules of the department and witnessed by an approved agency not affiliated with the one performing the test. The department shall be notified at least 10 days prior to the owner's periodic inspection and testing pursuant to rule of the department.

CONSTRUCTION CODES UPDATE PAGE

Matter in plain text is unchanged. Matter underlined is new. Matter ~~stricken through~~ is deleted.
Source: Local Law 37 of 2008, effective February 9, 2009.

GENERAL ADMINISTRATIVE PROVISIONS

Insert between pages A-52 and A-53 of your bound volumes of the NYC Building Code, NYC Plumbing Code, NYC Mechanical Code and NYC Fuel Gas Code.

Add the following new section:

§28-301.2 Filing of reports in writing or electronically. Reports required to be filed under this chapter shall be filed in writing or electronically as the commissioner may require.

§28-304.6.2 Scope. During periodic inspection and testing, in addition to any other requirements prescribed by this code, all parts of the equipment shall be inspected to determine that they are in safe operating condition and that parts subject to wear have not worn to such an extent as to affect the safe and reliable operation of the installation.

§28-304.6.3 Reporting an unsafe or hazardous condition. If an inspection reveals that any elevator or other conveying system is unsafe or hazardous to life and safety, the device is to be taken out of service immediately by the agency performing the inspection and the building owner notified immediately. The department shall be notified by telephone or fax within 24 hours.

§28-304.6.4 Notation of inspection or test. After each inspection or test, the inspector shall affix the inspection date and his or her signature over a stamp identifying his or her approved agency and his or her approval number on the inspection certificate issued by the department.

§28-304.6.5 Inspection and test reports submission. Inspection and test reports shall be submitted on such forms and in such manner as required by the commissioner. Copies of each report (each copy originally signed by the inspector performing the inspection and test and by the inspector witnessing the inspection and test, the agency director, and the building owner) listing all violations of any of the provisions of this code for each device inspected and/or tested, shall be delivered to the owner within 30 calendar days of the inspection or test and filed with the department within 45 calendar days of the inspection or test.

§28-304.6.6 Repair. All defects as found and reported in such inspection and test reports shall be corrected within 45 days of the filing of the report, except all hazardous conditions shall be corrected immediately.

§28-304.7 Required contract. The owner of all new and existing passenger elevators shall have a contract with an approved agency to perform elevator repair work and maintenance as defined by ASME 17.1. The name, address and telephone number of such agency shall be maintained at each premises, on the mainline disconnect switch and in a location readily accessible to employees of the department and to maintenance and custodial staff at the premises.

§28-304.8 Fees. Every owner of elevators and other devices shall pay to the department an inspection fee and a report filing fee for each elevator or device in the amount prescribed by this code.

§28-304.9 Additional inspections. The commissioner may make such additional inspections as required to enforce the provisions of this code. No fee shall be charged for such additional inspections.

**ARTICLE 305
RETAINING WALLS**

§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 and 305.1.2.

§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.

§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.

§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.

**ARTICLE 306
PARTY WALLS**

§28-306.1 Responsibility for party walls. Repair and maintenance of the construction, design and fire-resistance rating of party walls shall be the joint responsibility of the owners of the adjoining properties, and any change by either owner must maintain the weather protection, structural, vertical fire division and other requirements of this code for party walls.

**ARTICLE 307
WORKPLACE EXITS**

§28-307.1 Obstruction of workplace exits prohibited.

Except for the exemptions specified in subdivision j of section 27-371 of the administrative code or chapter 10 of the New York city building code, as applicable, it shall be unlawful for an employer or the agent of an employer to lock the doors of a workplace or otherwise obstruct or prohibit exit from a workplace when such act may endanger the health or safety of any employee, independent contractor or other individual in such workplace in the event of a fire or other hazardous condition or event. The commissioner shall classify a violation of this section as an immediately hazardous violation. Notwithstanding any other provision of this code, upon criminal conviction or civil adjudication of liability for a violation of this section an additional fine or civil penalty of not less than five thousand dollars nor more than twenty thousand dollars shall be imposed for each employee, independent contractor or other individual endangered by a violation of this section.

§28-307.1.1 Notice. A sign shall be posted conspicuously at the workplace of a person convicted of or found liable for a violation of section 28-307.1. Such sign shall, in English, Spanish, Korean, Chinese or any other language directed by the fire commissioner, provide notice to employees of the acts prohibited by section 28-307.1 and of the remedies for employer retaliation as set forth in section 28-307.3. The sign shall be in a form and posted in a manner directed by the fire commissioner and may contain any other information deemed necessary by the fire commissioner or as recommended by the police commissioner or the commissioner. The fire commissioner may, in the interest of public safety, adopt a rule requiring the posting of such signs at other workplaces.

§28-307.2 Unannounced inspections of workplaces by fire department.

In addition to any other inspections required by law or rule, the fire department shall conduct a minimum of fifty unannounced workplace inspections annually to ensure the identification and abatement of any hazardous conditions in violation of section 28-307.1. Such inspections shall include, but not be limited to, sites where there are known or suspected conditions affecting employee safety and health.

§28-307.3 Retaliation.

It shall be unlawful for an employer or the agent of such employer to take a retaliatory action, as defined by section 740 of the labor law, against an employee because of the lawful acts of such employee in furtherance of a civil or criminal enforcement proceeding arising out of the failure of such employer or agent to comply with section 28-307.1. An employee who is the victim of such retaliatory action may commence an action in any court of competent jurisdiction for the relief provided for in this section and shall be entitled to all relief necessary to make such employee whole. Lawful acts of an employee shall include, but not be limited to, assisting in the investigation and initiation of an enforcement proceeding alleging a violation of section 28-307.1, providing testimony in any such proceeding or providing other assistance in connection therewith. The relief to which such employee shall be entitled shall include, but not be limited to, (i) an injunction to restrain any adverse or retaliatory action, (ii) reinstatement to the position such officer or employee would have had but for

such action, or to an equivalent position, (iii) reinstatement of full benefits and seniority rights including payment of any missed back pay, plus interest and (iv) compensation for any special damages sustained as a result of such action, including litigation costs and reasonable attorneys' fees.

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Source: Local Law 37 of 2008, effective February 9, 2009.

GENERAL ADMINISTRATIVE PROVISIONS

Insert between pages A-54 and A-55 of your bound volumes of the NYC Building Code, NYC Plumbing Code, NYC Mechanical Code and NYC Fuel Gas Code.

Amend section 28-305.1 to read as follows:

§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 ~~and~~, 305.1.2 ~~and~~ 305.4.

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GENERAL ADMINISTRATIVE PROVISIONS

Insert between pages A-54 and A-55 of your bound volumes of the NYC Building Code, NYC Plumbing Code, NYC Mechanical Code and NYC Fuel Gas Code.

Add the following new section:

§28-305.4 Maintenance, inspection and repair of retaining walls. Maintenance, inspection and repair of retaining walls shall comply with the following provisions:

§28-305.4.1 Retaining wall. For the purposes of this section, retaining wall shall mean 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 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 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 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 the following provisions.

§28-305.4.4.1 Except as otherwise provided in subdivision 28-305.4.6, below, the registered design professional shall submit a written report to the commissioner within sixty 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 as either safe, safe with minor repair or safe with repair and/or

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engineering monitoring, as prescribed by rules of the department.

§28-305.4.4.2 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 The owner or the owner's agent shall obtain a permit from the department in order to correct the unsafe condition, after securing public safety as provided above.

§28-305.4.7.2 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 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 The commissioner may grant an extension of time of up to ninety 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 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

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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 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.