

## 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.

**§28-301.1.1 Parapets.** A building's parapet shall be maintained in a safe condition. A building owner must have an annual parapet observation performed as described in the rules of the department. This observation must be performed on all buildings, regardless of height.

**Exception:** The requirements of this section shall not apply to detached one- or two-family homes.

**§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.

### 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 during each five-year report filing cycle, as defined by rule of the department. 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, at least once during each five-year report filing cycle, as defined by rule of the department 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 signed and sealed 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 90 days of filing the critical examination report.
2. The owner shall engage a registered design professional to 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

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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 and the provisions of section 1011.3 of the New York city mechanical code.

**§28-303.2 Annual inspections.** Except as otherwise provided in this article, each owner of a boiler, 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 have such boiler inspected at least once a year in accordance with this article. 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.** All high-pressure boilers shall have an annual internal inspection performed in accordance with section 204 of New York state labor law and the rules of the department. Where construction of a low-pressure boiler allows, an internal inspection shall be performed on a periodic schedule in accordance with section 204 of the New York state labor law and the rules of the department.

**§28-303.2.2 External inspection required.** All high- and low-pressure boilers shall have an annual external inspection performed in accordance with section 204 of New York state labor law and the rules of the department. Such inspection shall include chimney connectors.

**§28-303.2.3 Electric high-pressure boilers.** Electric boilers operating at pressures or temperatures classified as high-pressure boilers, as defined in the New York city mechanical code, shall be annually inspected as high-pressure boilers in accordance with this article.

**§28-303.3 Qualifications of boiler inspectors.** All individuals who perform periodic inspections pursuant to this article shall have the qualifications set forth in the rules of the department and in section 28-303.3.1 or section 28-303.3.2 of this code, as applicable.

**§28-303.3.1 High-pressure boilers.** Inspections required by section 28-303.2 of this code of a high-pressure boiler must be performed, in accordance with the rules of the department, on behalf of the owner, by boiler inspectors in the employ of a duly authorized insurance company who are qualified in accordance with section 204 of the New York state labor law.

**§28-303.3.2 Low-pressure boilers.** Inspections required by section 28-303.2 of a low-pressure boiler must be performed, in accordance with the rules of the department, on behalf of the owner, by boiler inspectors who are qualified in accordance with section 204 of the New York state labor law.

**§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 Reporting an unsafe or hazardous condition.** If an inspection reveals that any boiler is unsafe or hazardous to life and safety, the device is to be immediately taken out of service by the approved boiler inspection agency performing the inspection and the building owner shall be notified. Such agency shall notify the department of the unsafe or hazardous condition of the boiler within 24 hours after the condition is discovered. Notification to the department may be made by telephone, electronically or in writing.

**§28-303.7 Owner's annual boiler inspection report.** The owner of each boiler that is subject to inspection pursuant to section 28-303.2 shall file a signed annual report with the commissioner in accordance with the rules of the department within 14 days after the required annual inspection of the boiler has been performed. Extensions of time to file such report may be granted in accordance with the rules of the department. The report shall include, but shall not be limited to:

1. The location of the boiler.
2. The name and address of the inspector, the qualification of the inspector to perform the inspection, the date of inspection and if the inspector is a qualified boiler inspector in the employ of a duly authorized insurance company, the policy number covering the boiler.
3. A list of all defects found in the inspection for each device inspected.

**§28-303.7.1 Affirmation of correction.** All defects identified in the annual boiler inspection report shall be corrected within 90 days after the date of initial inspection. The department may grant an extension of 45 days upon submission of an application by the owner demonstrating a practical difficulty in complying within the 90 day time-frame. In no case shall a single extension request be granted for more than 45 days, and no more than two such extensions be granted for a specific defect. An affirmation of correction shall be filed within 14 days of the date of correction.

**§28-303.8 Scope of inspection.** During required inspection and testing, in addition to any other requirements prescribed by this code or the rules of the department, 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 boiler.

**§28-303.9 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.

**§28-303.10 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.

**§28-303.11 Fees.** The owner of each boiler subject to periodic inspection pursuant to this article 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 boiler inspection report. No fee shall be charged for additional inspections made by the department pursuant to section 28-303.10.

**ARTICLE 304  
ELEVATORS AND CONVEYING SYSTEMS**

**§28-304.1 General.** Elevators and conveying systems shall be maintained in a safe condition and in accordance with ASME A17.1, as modified by appendix K of the New York city building code. Every new and existing elevator or conveying system shall be inspected and tested in accordance with this article.

**§28-304.2 Elevators, escalators, moving walkways, material lifts, man lifts and dumbwaiters.** Elevators, escalators, moving walkways, material lifts, man lifts and dumbwaiters shall be inspected and tested in accordance with section 28-304.6, chapter 30 of the New York city building code, and the schedule set forth in Table N1 of ASME A17.1 as modified by chapter K1 of appendix K of the New York city building code.

**§28-304.3 Platform lifts, stairway chair lifts and vertical reciprocating conveyors (VRCs).** Platform lifts, stairway chair lifts and VRCs shall be inspected and tested at intervals not exceeding one year. Inspections and tests shall be performed in accordance with Table N1.

**§28-304.4 Amusement devices.** Amusement devices shall be inspected and tested in accordance with department rules.

**§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 Table N1 of ASME A17.1 as modified by chapter K1 of appendix K of the New York city building code and, where applicable, department rules and with sections 28-304.6.1 through 28-304.6.6 of this code.

**§28-304.6.1 Inspection and testing entities.** The required category tests and periodic inspections in Table N1 of ASME A17.1 as modified by chapter K1 of appendix K of the New York City building code shall be performed on behalf of the owner by an approved elevator agency in

accordance with this code and department rules. Where indicated in Table N1, tests shall be witnessed by an approved elevator agency not affiliated with the agency performing the test, and not affiliated with the agency performing the elevator work. Where indicated in Table N1, inspections shall be performed by an approved elevator agency not affiliated with the agency performing the maintenance. Not affiliated, as used in this section, shall mean the approved elevator agency owners, directors and inspectors shall be independent of all relative approved elevator agencies, maintenance firms or other entities providing any associated services to the device owner. Such other tests and inspections shall comply with the timeframes established as follows:

1. Category 1 tests shall be performed between January 1st and December 31st of each year at a minimal time interval of six months from the date of the previous Category 1 testing. Category 1 tests are required on new installations the calendar year following final acceptance test.
2. Category 3 tests for water hydraulics shall be performed every three years on or before the anniversary month of the last Category 3 testing.
3. Category 5 tests shall be performed every five years on or before the month of the final acceptance test for new elevators or the anniversary month of the last Category 5 testing.
4. Periodic inspections shall be performed between January 1 and December 31 of each year at a minimum of three months from the date of any Category 1 testing or previous periodic inspection. Initial periodic inspections on new installations shall be performed in the calendar year following the final acceptance test. For private residence elevators, the periodic inspection and category testing may be performed on the same date.

**§28-304.6.1.1 Department notification.** The department shall be notified by the agency performing the test at least five days prior to the Category 1 testing of escalators, Category 3 testing of water hydraulic elevators and Category 5 testing of elevators, pursuant to the rules of the department.

**§28-304.6.2 Scope.** During periodic inspection and category 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 a periodic inspection or category test 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 or test and the building owner notified immediately. The performing agency shall notify the department by telephone, electronically or in writing within 24 hours.

**§28-304.6.4 Periodic inspection and category testing reports and notations on the inspection certificate.**

Periodic inspection and category testing reports and notations on the inspection certificate shall comply with the requirements of sections 28-304.6.4.1 and 28-304.6.4.2.

**§28-304.6.4.1 Periodic inspections.** For the periodic inspections listed in Table N1 of ASME A17.1, as modified by chapter K1 of appendix K of the New York city building code, the performing inspector shall, on the day of each inspection: (i) complete the periodic inspection report, documenting all violating conditions, if any, and affix his or her signature; (ii) provide a copy of such report to the owner or owner’s representative; and (iii) affix the date and his or her signature over a stamp identifying his or her approved elevator agency and his or her approval number on the inspection certificate issued by the department attesting to completion of items (i) and (ii). No witnessing agency is required to witness the periodic inspections.

**§28-304.6.4.2 Category testing when a witnessing agency is required.** When a witnessing agency is required to witness category tests listed in Table N1 of ASME A17.1, as modified by chapter K1 of appendix K of the New York city building code, the performing inspector shall, on the day of each test complete the category test report, documenting all violating conditions, if any, and affix his or her signature; and provide a copy of such report to the owner or owner’s representative with the witnessing agency inspector signature. The witnessing agency inspector shall, on the day of each test: (i) review and confirm the category test report and also affix his or her signature to it; (ii) confirm that a copy of such report was provided to the owner or owner’s representative; and (iii) affix the date and his or her signature over a stamp identifying his or her approved elevator agency and his or her approval number on the inspection certificate issued by the department attesting to the completion of items (i) and (ii).

**§28-304.6.4.3 Category testing when no witnessing agency is required.** When no witnessing agency is required to witness the category tests listed in Table N1 of ASME A17.1, as modified by chapter K1 of appendix K of the New York city building code, the performing inspector shall, on the day of each test: (i) complete the category test report, documenting all violating conditions, if any, and affix his or her signature; (ii) provide a copy of such report to the owner or owner’s representative; and (iii) affix the date and his or her signature over a stamp identifying his or her approved elevator agency and his or her approval number on the inspection certificate issued by the department attesting to completion of items (i) and (ii).

**§28-304.6.5 Periodic inspection or category test reports submission.** Periodic inspection or category test reports shall be submitted to the department on such forms and in such manner as required by the commissioner. Such reports shall comply with the following and department rules.

**§28-304.6.5.1 Periodic inspection reports.** Reports of periodic inspections shall comply with the following:

1. The reports shall contain the signatures of (i) the performing agency director, and (ii) the building owner.
2. The reports, with all applicable signatures, shall be filed with the department within 14 days after the date of the inspection.

**§28-304.6.5.2 Category test reports.** Reports of category tests shall comply with the following:

1. The reports shall contain signatures of (i) the performing agency inspector and director, (ii) the witnessing agency director, if required under Table N1 of ASME A17.1 as modified by chapter K1 of appendix K of the New York city building code, and (iii) the building owner.
2. The completed reports, with all applicable signatures, shall be filed with the department within 21 days after the date of the test.

**Exception:** Reports are not required to be submitted to the department for private residence wheelchair lifts and private residence dumbwaiters devices. However, the owner shall maintain an inspection and test log to be available to the department upon request.

**§28-304.6.6 Periodic inspection and category testing repair.** All defects as found in periodic inspection and category testing reports shall be corrected in accordance with the requirements of sections 28-304.6.6.1 and 28-304.6.6.2 of this code, except that all hazardous conditions and defects related to firefighters’ Phase I emergency recall operations or Phase II emergency in-car operation as required by section 3003.2 of the New York city building code shall be corrected immediately.

**§28-304.6.6.1 Category test repair.** All defects as found in such category test report shall be corrected within 90 days after the date of inspection. The department may grant an extension of 45 days upon submission of an application by the owner demonstrating a practical difficulty in complying within the 90 day timeframe. In no case shall more than two such extensions be granted for a specific defect. An affirmation of correction shall be filed within 14 days after the date of correction.

**§28-304.6.6.2 Periodic inspection repair.** All defects as found in such periodic inspection report shall be corrected within 90 days after the date of test. An affirmation of correction shall be filed within 14 days of the date of correction.

**§28-304.7 Required contract.** The owner of all new and existing passenger elevators, freight elevators, and escalators shall have a contract with an approved elevator agency to perform elevator and escalator maintenance, repair and replacement work as defined by ASME A17.1 as modified by chapter K1 of appendix K of the New York city building code. 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 a report filing fee for each elevator or device in the amount prescribed by the department's rules.

**§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.

**§28-304.10 Occupant notification for elevator work.** In occupancy groups R-1 and R-2, when an elevator is to be out of service, a notice identifying the type of work to be performed and the expected start and end dates for such outage shall be provided in English, Spanish, and such other languages as the department may provide by rule, in accordance with sections 28-304.10.1 and 28-304.10.2.

**§28-304.10.1 Occupant notification for alteration work.** When an elevator is to be out of service for alteration work, notice shall be given to the residential occupants no fewer than 10 business days before the start of the work, except in case of emergency repairs. This notification requirement does not apply to minor alterations and ordinary repairs.

**§28-304.10.2 Occupant notification for other elevator service outages.** When all elevators servicing a building or any section of a building are expected to be out of service for two or more hours, notice shall be posted at least twenty-four hours before the start of the work. When all elevators servicing a building or any section of a building are expected to be out of service for less than two hours, or are out of service as the result of emergency work, notice is not required to be posted, except that where such outage lasts for two or more hours, notice shall be posted as soon as practicable after the commencement of such service outage.

**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.

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**§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.

## 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.

**§28-306.2 Safeguards during construction or demolition.**

Refer to section 3309 of the New York city building code for additional requirements for the maintenance of party walls during construction or demolition operations.

**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 New York city 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 \$5,000 nor more than \$20,000 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 50 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 New York state 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 of this code. 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 of this code, 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.

**ARTICLE 308  
ENERGY AUDITS AND RETRO-COMMISSIONING  
OF BASE BUILDING SYSTEMS**

**§28-308.1 Definitions.** As used in this article, the following terms shall have the following meanings:

**BASE BUILDING SYSTEMS.** The systems or subsystems of a building that use energy and/or impact energy consumption including:

1. The building envelope.
2. The heating ventilating and air conditioning (HVAC) systems.
3. Conveying systems.
4. Domestic hot water systems.
5. Electrical and lighting systems.

**Exception:** The term "base building systems" shall not include:

1. Systems or subsystems owned by tenants (other than a net lessee for a term of 49 years or more, inclusive of renewal options), condominium unit owners or cooperative unit shareholders, or a system or subsystems for which a tenant bears full maintenance responsibility and that is within the tenant's leased space and/or exclusively serves such leased space.
2. Industrial processes that occur within a covered building.

**BUILDING MANAGEMENT SYSTEM.** A computer-based system that monitors and controls a building's mechanical and electrical equipment, such as HVAC, lighting, power, fire, and security systems, including, at a minimum, control of the heating equipment using interior temperature sensors.

**CITY BUILDING.** A covered building that is owned by the city and for which the city regularly pays all or part of the annual energy bills.

**Exception:** The term "city building" shall not include:

1. Any building that participates in the tenant interim lease apartment purchase program.

## MAINTENANCE OF BUILDINGS

2. Any building that participates in a program administered by the department of housing preservation and development.
3. Any building managed by the New York city health and hospitals corporation.
4. Any senior college in the City University of New York system.
5. Any cultural institution that is in the Cultural Institutions Group as determined by the department of cultural affairs.

**COOPERATIVE CORPORATION.** A corporation governed by the requirements of the state cooperative corporation law or general business law that, among other things, grants persons the right to reside in a cooperative apartment, that right existing by such person's ownership of certificates of stock, proprietary lease, or other evidence of ownership of an interest in such entity.

**COVERED BUILDING.** As it appears in the records of the department of finance: (i) a building that exceeds 50,000 gross square feet (4645 m<sup>2</sup>), (ii) two or more buildings on the same tax lot that together exceed 100,000 gross square feet (9290 m<sup>2</sup>), or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet (9290 m<sup>2</sup>).

**Exception:** The term "covered building" shall not include real property classified as class one pursuant to subdivision one of section eighteen hundred two of the real property tax law of the state of New York.

**CURRENT FACILITY REQUIREMENTS.** The owner's current operational needs and requirements for a building, including temperature and humidity set points, operating hours, filtration, and any integrated requirements such as controls, warranty review, and service contract review.

**ENERGY AUDIT OR AUDIT.** A systematic process of identifying and developing modifications and improvements of the base building systems, including but not limited to alterations of such systems and the installation of new equipment, insulation or other generally recognized energy efficiency technologies to optimize energy performance of the building and achieve energy savings, provided that such process shall not be less stringent than the Level II Energy Survey and Engineering Analysis of the 2004 edition of *Procedures for Commercial Building Energy Audits* published by the American Society of Heating, Refrigerating and Air-conditioning Engineers Inc. (ASHRAE).

**ENERGY AUDITOR.** An approved agency authorized by the department to perform energy audits and to certify audit reports required by this article. Until such time as there is a national standard establishing qualifications for persons performing energy audits and such standard has been adopted by the department, an energy auditor shall be a registered design professional with such other certification or qualification as the department deems to be appropriate. After the establishment of such a national standard, the department may adopt the qualifications of the national standard with

such modifications as the department deems to be appropriate.

**ENERGY EFFICIENCY REPORT.**‡ The report required to be filed pursuant to section 28-308.4.

**ENERGY MANAGEMENT SYSTEM.** A system incorporating interior temperature sensors and a central processing unit and controls, which are used to monitor and control gas, steam and oil usage, as is applicable, based on the need for heating.

**FINANCIAL HARDSHIP (OF A BUILDING).** A building shall be considered to be subject to financial hardship if the building:

1. Had arrears of property taxes or water or wastewater charges that resulted in the property's inclusion, within two years prior to the due date of an energy efficiency report, on the department of finance's annual New York City tax lien sale list;
2. Is exempt from real property taxes pursuant to sections 420-a, 420-b, 446 or 462 of the New York state real property tax law and applicable local law and the owner had negative revenue less expenses during the two tax years prior to the due date of an energy efficiency report as certified to the department by a certified public accountant;
3. Had outstanding balances under the department of housing preservation and development's emergency repair program that resulted in the property's inclusion, within two years prior to the due date of an energy efficiency report, on the department of finance's annual New York City tax lien sale list; or
4. Has an active or effective commitment letter from a governmental agency that provides for the financing of the rehabilitation, within a period of five years or less, of such building by such government agency for the purposes of affordable housing for low or moderate income families.

**OWNER.** The owner of record of a covered building, except that in the case of a net lease of an entire building for a term of 49 years or more, inclusive of renewal options, the term owner shall refer to the net lessee and in the case of a covered building held in cooperative or condominium form of ownership, the term owner shall refer to the board of managers in the case of a condominium and the board of directors in the case of a cooperative apartment corporation.

**RETRO-COMMISSIONING.** A systematic process for optimizing the energy efficiency of existing base building systems through the identification and correction of deficiencies in such systems, including but not limited to repairs of defects, cleaning, adjustments of valves, sensors, controls or programmed settings, and/or changes in operational practices.

**RETRO-COMMISSIONING AGENT.** An individual, who shall not be a certified refrigerating system operating engineer or a licensed high-pressure‡ boiler operating engineer on the staff of the building being retro-commissioned, authorized by the department to certify retro-commissioning reports required by this article. Until such time as there is a