

Article I – Levying of civil penalties

A. Intent of civil penalties

The civil penalties provided for by LORC § 23-17 serve primarily as a deterrent against the continuing existence of violations. This is best served by a fair, but diligent and timely system for assessing such penalties, to prevent the continuing existence of New York State Uniform Code violations, which by their very nature, have been declared by the NYS Legislature and the NYS Secretary of State, to constitute a danger and hazard to life, safety, and health.

B. Notice of Violation.

1. The Director or any inspector may issue a Notice of Violation at any time. The purpose of a Notice of Violation is solely to provide immediate notice that an inspector has detected violations at an inspection of a property.
2. A Notice of Violation may be provided to a person at the site of the inspection and/or served by mail to the owner or any interested party described by Laws of Rockland County (LORC) § 23-17(A)(4).
3. Inclusion or exclusion of a violation on a Notice of Violation is not dispositive of the existence or non-existence of the existence of a violation. The failure to include a violation on a Notice of Violation is not a bar to its inclusion on later notices or orders.

C. Order to Remedy

In addition to the terms and conditions surrounding the issuance of an Order to Remedy described in LORC § 23-17(A),

1. The Director or the Director's designee may, separately or in conjunction with a Notice of Violation, issue and serve an Order to Remedy, in the manner set forth in LORC § 23-17(A).
2. A party named on an Order to Remedy is called a 'Respondent'.
3. Respondent may provide proof to the Director that the violations described on an Order to Remedy have been cured within the time permitted by the Order to Remedy. All remediation of violations must be performed in accordance with LORC Ch. 23, Art. I and the Uniform Codes and be satisfactory to the Director.
4. On an Order to Remedy, the Director may make findings of liability and/or assess a civil penalty as permitted by LORC § 23-17(C) and order the payment of such penalty, subject to the terms of these regulations.

- a. Where the Order to Remedy makes a finding of liability for one or more violations or assesses a penalty against a Respondent, that determination of liability or assessment of penalty is subject to challenge if the Respondent requests a hearing in the manner described in these regulations.
 - b. To challenge the findings or assessments in the Order to Remedy, a Request for Hearing must be received by the close of business on a date ordered by the Director, which date can be no earlier than the date to remedy the violations.
 5. An Order to Remedy must contain the following:
 - a. The name of each Respondent;
 - b. The address of the property subject to the Order to Remedy;
 - c. The violations required to be remedied;
 - d. The amount of the penalty being assessed for each violation, and the gross penalty amount;
 - e. A concise statement; prominently printed and in plain language, advising the Respondent that the penalty assessments described on the Order to Remedy may be challenged at a hearing pursuant to the procedures set forth in these rules; and
 - f. That to challenge the findings in the Order to Remedy, a Request for Hearing must be received by the Office of Buildings and Codes in the form designated by the Director, in hard copy or electronically at a specified address or by a specified process, by the close of business on the date set forth on the Notice.
 6. The violations for which findings and penalties assessed on Order to Remedy are selected at the sole discretion of the Director. The Director may amend or supplement such findings or penalties by either the delivery of a further Order to Remedy and/or in any other manner set forth in NYS Executive Law Art. 18 and its attendant regulations, or LORC Ch. 23 and these regulations.
 7. The failure to include a particular violation on an Order to Remedy is not evidence or acknowledgement that the violation has been cured or that it has been remedied to the satisfaction of the Director.
- D. Demand for a hearing in a civil penalty proceeding.
1. Respondent may challenge the findings of liability and/or the amount of penalties assessed described in the Order to Remedy by completing and delivering to the Director,

- a written request for an administrative hearing to the Director on the form specified by the Director.
2. The Request for Hearing in the form provided by the Director, must be received by the Director by the close of business within the timeframe set in the Order to Remedy. The Director, for good cause shown, may extend the time permitted to receive the Request for Hearing, or waive requirements concerning its form.
 3. If a Request for Hearing is received in a form satisfactory to the Director, the final determination of liability and the assessment of penalties shall be deferred and made final only after the hearing process described in these regulations. The findings and assessments of the Order to Remedy may be amended by the Director following the hearing.
 4. If no satisfactory Request for Hearing is received by the Director, then any findings, assessments, or orders described on the Order to Remedy converts to the Director's Determination and Assessment of Penalty.

E. Request for Hearing

1. Upon receipt of the Request for Hearing, the Director shall hold a hearing in the manner set forth in Article II, below, before the findings and penalty assessment will become a final determination.
2. A Request for Hearing must contain:
 - i. For individuals
 - a. Name
 - b. Street Address
 - c. Email Address, if available, which if provided may be used for official communications and notices.
 - d. Telephone number, if available
 - ii. For corporate entities
 - a. Official name as filed with the NYS Secretary of State;
 - b. Name of the person filing the form;
 - c. Email address of representative(s), if available, which if provided may be used for official communications and notices;
 - d. Telephone for representative(s), if available

3. Once a request for hearing is filed, the County is only required to communicate with persons described on the Request for Hearing or an attorney admitted to practice law in the State of New York who states in writing that the attorney represents the individual or corporate entity named on the Request for Hearing. A Respondent may amend a Request for Hearing's contact information by a writing to the Director's designated contact for this purpose at the Office of Buildings and Codes.

Article II – Administrative hearings for assessment of civil penalties

- A. The following procedural rules shall apply to administrative hearings held by or on behalf of the Director of Buildings and Codes (hereinafter referred to as "Director") with regard to the assessment of civil penalties as per LORC § 23-17. This regulation does not apply to any hearing held pursuant to any other provision of LORC Ch. 23, Art. I.
- B. General terms
 1. Any person or entity described as Respondent in a Notice of Hearing from the Office of Buildings and Codes under these regulations shall be known as a 'Respondent'.
 2. Due Process. In all instances these rules must be interpreted and applied to ensure that the procedural due process rights of the Respondent are preserved.
 3. Conflicts. In the case of any conflict between these regulations and the local law enabling them, the terms of the local law shall apply.
 4. Director's power to delegate. All references to the Director in these regulations apply equally to any person delegated to perform a duty or exercise a power held by the Director.
 5. Adjournments or extensions of hearings or other deadlines contained in these regulations, or orders of the Director are granted at the sole discretion of the Director or Hearing Officer assigned to a matter.
 6. There is no requirement to join a necessary party to an administrative hearing.
 7. Every matter must be given a docket number.

C. Notice of hearing

1. In all matters for which a hearing is requested by respondent's filing of a Request for Hearing, a Notice of Hearing (hereinafter referred to as "Notice") shall be provided to the Respondent. Every Notice shall provide:
 - a. The docket number of the matter.
 - b. Address of the subject property, including Tax Map Section, Lot, and Block.
 - c. [omitted]
 - d. A description, including a citation to the code, rule or regulation violated, and a written summary of the factual basis for the violation. The violations described may amend the violations, or add to those violations described in a Notice of Noncompliance related to the subject property.
 - e. A hard copy or electronic copy of the proofs to be relied upon by the County at the hearing.
 - i. Proof not delivered with the Notice may be considered at a hearing but may be grounds for an adjournment or extension of time to respond if the newly added proof is material to the consideration of a penalty.
 - ii. Allegations of new violations may only be commenced by the service of a new Notice of Hearing upon the Respondent. A violation consisting of the continuing nature or exacerbation of a previously charged violation is not a new violation.
2. Service of Notice. The Director shall cause a Notice of Hearing, to be served on the Respondent at least 10 business days prior to the date of the hearing.
 - a. The Respondent will be served personally in the manner provided by the NYS Civil Practice Law and Rules § 308, 309, 310, 311(a)(1) or 311-a, or
 - b. by certified mail (with return receipt requested at discretion of the Director) to
 - i. the Director may serve a respondent who is the owner of the property by mailing the Notice of Hearing by Certified Mail (return receipt requested at the discretion of the Director), to the address listed for the assessed owner of the property that is on file with the Tax Assessor for the Town in which the subject property is located; or

- ii. to the address described on an open Building Permit application for the property at which the violations are alleged; or
 - iii.
 - iv. to an email address listed on the Request for Hearing; or
 - 3. by any other method deemed sufficient to give notice to the Respondent.
 - 4. The Director is permitted, but not required, to cause the Notice of Hearing, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work being performed at the affected property personally or by registered mail or certified mail; provided, however, that failure to serve any Person mentioned in this subsection shall not affect the conduct of an administrative hearing in the matter.
 - 5. Determination of notice issues.
 - a. Any Respondent who raises as defense or claim before or during a hearing that there has been a failure to comply with these rules concerning notice, is subject to the jurisdiction of the administrative proceeding as evidenced by their knowledge of the proceeding. The Director may grant any adjournment of the proceeding that, in the Director's sole discretion, is necessary to ensure a fair hearing of the issues before the tribunal.
 - b. Any Respondent who raises as defense or claim after a hearing that there has been a failure to comply with these rules concerning notice, will get a determination from the Director regarding that defense. The Director may order a reopening of the proceeding or such other remedy that, in the Director's sole discretion, is appropriate. Notice arguments shall not be considered or decided as part of the matter before the Administrative Hearing.
- D. Opportunity to be heard
- 1. Hearings will be conducted by the Director or a Hearing Officer.
 - a. The Director or appointed Hearing Officers will administer the hearing, take evidence from the parties regarding the alleged violation(s) including, where desired by the Director or Hearing Officer, the conduct of cross-examination, and make a record of the hearing in accordance with these rules. Cross-examination by the opposing party is permitted but not

required. At the discretion of the Director or the Hearing Officer, any witness may be examined or cross-examined on the issues and facts of the matter. Hearing Officers have no jurisdiction to determine issues concerning the notice provisions of this regulation, and shall refer all questions to the Director for determination. Such a referral is not a ground to stay the hearing, although a delay for the purpose of permitting the Respondent to prepare is permitted where a credible claim of lack of notice resulted in an inability to prepare for the hearing.

- b. The Director or Hearing Officers may establish additional hearing rules to the parties, witnesses and anyone involved in the hearing concerning the conduct of the hearing and the presentation of evidence by the parties, but any such rules that contradict this Article shall not be permitted
- c. Upon the completion of the hearing, the Director or Hearing Officer that conducted the hearing will, within a reasonable time, complete a report summarizing the facts of the matter, the credibility of the witnesses and proofs, and a recommendation as to the liability or lack thereof for the violation(s) by the Respondent indicated on the Notice of Hearing. In addition, the Hearing Officer shall indicate any exacerbating or mitigating circumstances the Director should consider in making a determination on the amount of any civil penalty that may be awarded. Neither a Hearing Officer's liability recommendation, nor the indications of mitigating or exacerbating circumstances shall be a final determination or binding upon the Director or any party.
- d. Upon completion of a hearing by a Hearing Officer, the Hearing Officer will forward the record of the hearing, consisting of the Notice of Hearing, the proofs offered, and the recommendation to the Director.

E. Procedural rules for hearings.

1. Identification of the parties.

- a. Each Respondent and witness shall provide documentary proof of their identity by production of State or Federal photo ID, or an equivalent.. If no such document is available, a document constituting a sworn or affirmed

statement of identity shall be acceptable. In the event an affidavit or affirmation is used, at the Director's or Hearing Officer's discretion, a photo of the Respondent shall be made an exhibit to the document. Such identification shall be kept confidential to the extent permitted by law.

- b. Each Respondent shall state their legal street address where they reside.
2. Rules on acceptance of proofs.
 - a. At the sole discretion of each party, proofs to be offered by that party may be submitted by documents only.
 - b. At the discretion of the Director, or Hearing Officer with the permission of the Director, a particular hearing or the participation of particular parties or witnesses at a particular hearing, may be conducted remotely using a format chosen by the Director, and under such rules of conduct (i.e. video on) as the officer conducting the hearing may require. Any remote participation must be recorded, and the recording made a part of the record.
 - c. Documentary proof whether presented at a hearing attended by the parties or a hearing by documents only, may consist of written statements, moving or still images, drawings, sound recordings, summaries of data such as databases or spreadsheets, or other materials in formats viewable or readable by the Hearing Officer. The Hearing Officer will notify a party that submits unreadable documents and provide an opportunity to resubmit in a readable format. All parties shall be notified that all submissions are made under penalty of perjury.
 - d. The requirements of the NYS Civil Procedure Law and Rules' rules of evidence will not be required. However, the Director or Hearing Officer may weigh the probative value of the evidence at their own discretion. The Director or Hearing Officer conducting the hearing may administer the taking of testimonial and documentary evidence, including limitations of time or subject matter, in any manner they deem appropriate, but must comport with minimum procedural due process requirements.
3. Rules of testimony and argument.
 - a. All parties shall be notified that they are under penalty of perjury.

- b. The Director or Hearing Officer may permit written briefs on issues of interest to the Director or Hearing Officer, before, during or after testimony. However, the time allotted for the preparation of such briefs shall not cause undue delay in the completion of the hearing. Unless the Director permits otherwise, under no circumstances will the Director or a Hearing Officer permit more than ten business days for the preparation and delivery of briefs under any circumstances.
 - c. All written communications with the Director or Hearing Officer, documents, and proofs shall be made a part of the record of the hearing.
 - F. Assessment of the proofs.
 - 1. If a Hearing Officer is conducting the proceeding, the Hearing Officer shall provide a report and recommendation to the Director. The report and recommendation shall include:
 - a. A summary of the record including, where necessary, an assessment of the credibility of the evidence presented by the parties;
 - b. A recommendation on a finding of liability or non-liability for each Respondent for each violation alleged against that Respondent;
 - c. A statement of exacerbating or mitigating factors, if any, that in the opinion of the Hearing Officer, should be considered in the determination of the civil penalties shall be described and supported by reference to the proofs in the record; and
 - d. The report and recommendation must be delivered to the Director as soon as practicable.
 - e. The Hearing Officer must not make recommendations as to specific amounts to be levied as a penalty.
 - 2. If the Director is conducting the hearing, or upon receipt of a report and recommendation from a Hearing Officer, the Director shall sum up the proofs in a determination comprised of:
 - a. A summary of the record including, where necessary, an assessment of the credibility of the evidence presented by the parties;

- b. A finding of liability or non-liability for Respondent for each violation alleged against Respondent;
- c. A statement of exacerbating or mitigating factors, if any, that in the opinion of the Director, should be considered in the determination of the civil penalties shall be described and supported by reference to the proofs in the record; and
- d. A determination of the amounts of the civil penalty levied for each violation asserted against each Respondent.

Article III – Reconsideration and reopening

A. Procedure for Reconsideration and Reopening

- 1. Within fifteen business days of the service of the determination in accordance with the requirements provided for a Notice of Hearing, see section 1.C., a Respondent may request that the Director reconsider the determination made upon the hearing.
- 2. The request for reconsideration must be made on a form provided by the Director and filed with the Director at Office of Buildings and Codes, 50 Sanatorium Road, Building A, Pomona, NY 10970. The form shall contain the following information, as well as any further information the Director deems necessary to conduct the reconsideration:
 - a. The docket number of the matter;
 - b. The name and address of the Respondent;
 - c. Address of the subject property, including Map, Lot and Block Number.
 - d. A statement of the grounds for reconsideration for the hearing determination.
 - e. The form must be accompanied by a filing fee of \$100. An application for reconsideration not accompanied by the required fee will not deemed filed and will not be considered.
- 3. The reconsideration will be limited to the record and the determination from the hearing.

- a. New proofs will not be considered by the Director unless they are material to the matter and were unknown to any Respondent at the time of the hearing. The decision to receive new facts into the record is made at the Director's sole discretion.
 - b. At the Director's sole discretion, new proofs may also be introduced to accomplish substantial justice. Respondents are free to raise new matters of law on reconsideration. At the Director's sole discretion, the Director may request an opposition from the Office of Buildings and Codes where the Respondent raises new legal issues.
 - c. Any application for reconsideration, and any opposition to such application shall be made a part of the record.
4. A determination made by the Director upon reconsideration will be a final determination on the matter, and must include:
 - a. A statement as to whether or not the original determination is modified or amended, and the specific changes made, and
 - b. A statement as to the reason for the changes made.
- B. Reopening of a matter.
 1. At any time following a final determination, the Director may, at the Director's sole discretion, reopen a matter for any reason the Director deems necessary.
 2. Upon reopening a matter, the Director may:
 - a. Remand the matter back to the hearing stage for further proof taking and/or legal argument;
 - b. Modify a determination made after a hearing, which permits a Respondent to enter the reconsideration process;
 3. Modify a determination made after a reopening.
 - a. A modified determination must contain a statement describing the modification and provide a reason for that modification.
 - b. A modified determination is subject to an application to reconsider, in the manner described above.

