

NEW YORK CITY DEPARTMENT OF BUILDINGS

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Buildings (DOB) is proposing to amend its rules to add a new rule regarding artwork on temporary protective structures.

When and where is the hearing? DOB will hold a public hearing on the proposed rule online. The public hearing will take place at 12pm on 8/17/23.

- **Join through Internet – Desktop app:**

To join the hearing via your browser either click on the following URL link or copy and paste it into your browser's address bar. Then follow the prompts to either continue using the browser or download/open the Teams desktop app.

<https://tinyurl.com/Buildings202308Artwork>

Enter your name when prompted and click the **“Join now”** button. If you don't have computer audio or prefer to phone in for audio, select **“Phone audio”** under **“Other join options”** then click the **“Join now”** button. You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins. If you are using phone audio then follow the dial-in instructions when prompted.

If you have low bandwidth or inconsistent Internet connection, we suggest you use the Phone audio option for the hearing. This will reduce the possibility of dropped audio and stutters.

- **Join through Internet - Smartphone app:**

To join using the Microsoft Teams app on your smartphone, click on the following URL link from your phone to automatically open the Teams app. Note that the Microsoft Teams app must already be installed on your smartphone. It is available for free both in the Apple Store and Google Play.

<https://tinyurl.com/Buildings202308Artwork>

When prompted select **“Join meeting”**. Type your name and then select **“Join meeting”** again. You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins.

Alternatively, open the Teams app and select **“Join a meeting”**. Signing in with an account is not required. Type your name, the following Meeting ID and Passcode, then select **“Join meeting”**.

Meeting ID: 235 846 767 427

Passcode: 7ZBVdY

- Join via phone only:

To join the meeting only by phone, use the following information to connect:

Phone: 646-893-7101

Phone Conference ID: 122 898 305#

You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the DOB through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to dobrules@buildings.nyc.gov.
- **Mail.** You can mail comments to the New York City Department of Buildings, Office of the General Counsel, 280 Broadway, 7th floor, New York, NY 10007.
- **Fax.** You can fax comments to the New York City Department of Buildings, Office of the General Counsel, at 212-566-3843.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up by emailing dobrules@buildings.nyc.gov by 8/10/23 and including your name and affiliation. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit comments by 8/17/23.

What if I need assistance to participate in the hearing? You must tell the Office of the General Counsel if you need a reasonable accommodation of a disability at the hearing. You can tell us by email at dobrules@buildings.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by 8/3/23.

This location has the following accessibility option(s) available: Simultaneous transcription for people who are hearing impaired, and audio only access for those who are visually impaired.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all written comments and a summary of oral comments concerning the proposed rule will be available to the public at the Office of the General Counsel and may be requested by email at dobrules@buildings.nyc.gov.

What authorizes DOB to make this rule? Sections 643 and 1043(a) of the City Charter and Local Law 163 of 2021 authorize DOB to make this proposed rule. The rule was included in the regulatory agenda for this Fiscal Year.

Where can I find DOB's rules? DOB's rules are in Title 1 of the Rules of the City of New York.

What rules govern the rulemaking process? DOB must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Local Law 163 of 2021 (LL163) added a new section 3307.11 regarding artwork on temporary protective structures to Chapter 33 of the Building Code. LL 163 provides a process for building owners to display artwork on temporary protective structures. LL 163 also sets out the requirements for installing such artwork that is approved by the Department of Cultural Affairs.

A new section 3307-01 is now proposed to be added to Chapter 3300 to address the requirements of the law and set out procedures for notification, opting out and installation of artwork on temporary structures after September 1, 2023.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and Local Law 163 of 2021.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (***) indicate unamended text.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Chapter 3300 of Title 1 of the Rules of the City of New York is amended by adding a new section 3307-01 to read as follows:

§ 3307-01 Artwork on temporary protective structures.

(a) Required installation of artwork approved by the Department of Cultural Affairs (“DCLA”). Temporary protective structures installed on and after September 1, 2023 must include DCLA-approved artwork as defined in Section 3307.11.2 of the Building Code unless the owner of the property at which such temporary structure is installed opts out in accordance with the provisions of this section. For the purposes of this section, the term “temporary protective structures” refers to sidewalk sheds, construction fences, and supported scaffolds that are or will be installed for at least 90 days.

(b) Notification of solicitation of alternative artwork.

(1) A property owner may install artwork approved by DCLA in accordance with Section 2508 of the New York City Charter or alternative artwork in accordance with Section 3307.11.2.1 of the Building Code that is also approved by DCLA. If the owner chooses to install alternative artwork, the owner must comply with notification of solicitation of such alternative art in accordance with paragraph (2) below.

(2) Prior to seeking approval from DCLA, the property owner must notify the Council Member and Community Board where such property is located of a request to solicit artwork and proof of such notification must be submitted to DCLA at the time of application for approval of such alternative artwork.

(c) Opting out. A property owner may opt out of the requirement to install artwork on temporary protective structures at the time of filing an application for construction documents approval for such structure, pursuant to article 104 of chapter 1 of title 28 of the Administrative Code of the City of New York, or at any time thereafter. If the property owner is in the process of obtaining alternative artwork as set forth in subdivision (b) above at the time of filing such application, they must opt out of the requirement to install artwork until they file a post approval amendment in accordance with the requirements of paragraph 2 of subdivision (d) below.

Exception. Subject to appropriations of funds for city capital projects to install approved or alternative artwork, properties owned by the City of New York or receiving capital funding from the City or a City agency may not opt out, except as otherwise provided in Section 3307.11.8 of the Building Code.

(d) Installation and removal of the artwork.

(1) The applicant of record for the temporary protective structure must submit plans showing area of coverage, materials, and method of installation of the artwork to the temporary protective structure.

(2) If DCLA approval for alternative artwork is not received by the time that the application for the temporary protective structure is approved, the applicant must file a post approval amendment with revised plans that comply with paragraph (1) above when DCLA approval is received and prior to installation of the artwork.

(3) An owner may choose to participate in the program again after de-installation of the artwork and may install DCLA-approved artwork in accordance with the provisions of this section.

(e) Method of installation.

(1) Artwork installed on sheds. Artwork must be installed on the outer sides and ends of sidewalk sheds by stretching such artwork over the shed and fastening to the back or on panels that adhere directly to the outer sides and ends of the shed. Artwork cannot extend above or below the shed parapet or be larger than four (4) feet in height.

(2) Artwork installed on construction fences. Artwork must be installed on the outside of the construction fence by stretching such artwork over the fence and fastening to the back or on panels that adhere directly to the fence structure. Artwork cannot extend beyond the top of the fence.

(3) Artwork installed on supported scaffolds. Artwork must be printed on debris netting meeting the requirements of Section 3314.8.2 of the Building Code.

(f) Inspections.

(1) Upon completion of the installation of artwork on a temporary protective structure, such installation must be inspected by a qualified person designated by the permit holder for the temporary protective structure or a third party acceptable to such permit holder to verify that the artwork is in a safe condition and has been installed in accordance with approved plans. The results of the inspection must be documented in an installation inspection report signed and dated by the person who performed the inspection.

(2) In addition, the artwork must be inspected in accordance with the following provisions:

(i) Sheds – daily, as set out in Section 3307.6.5.10 of the Building Code.

(ii) Fences – weekly, as set out in Section 3307.7.8 of the Building Code.

(iii) Supported scaffolds – prior to each shift, as set out in Section 3314.4.3.4 of the Building Code.

(3) Inspection records must be kept on site and made available to the Department on request.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Artwork on Temporary Protective Structures

REFERENCE NUMBER: DOB-164

RULEMAKING AGENCY: Department of Buildings

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

June 30, 2023
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Artwork on Temporary Protective Structures

REFERENCE NUMBER: 2023 RG 044

RULEMAKING AGENCY: Department of Buildings

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Senior Counsel

Date: June 30, 2023