

SUMMARY OF MAY 6, 2010 LOCAL LAW 11/98 MEETING WITH NEW YORK CITY DEPARTMENT OF BUILDINGS

THE FOLLOWING IS A SUMMARY OF THE DEPARTMENT OF BUILDINGS' (DOB) POSITION ON A NUMBER OF ISSUES RELATED TO LOCAL LAW 11/98:

WHAT ARE THE RAMIFICATIONS OF THE SWARMP TIMEFRAMES?

A Safe With Repair and Maintenance (SWARMP) condition that is not repaired within the timeframe specified by the Design Professional (DP) in the Local Law 11/98 report (to which the Building Owner implicitly agrees by signing the TR-6) becomes “technically” Unsafe.

The Commissioner stated that if it can be proven that the Design Professional “had knowledge” of such a conditions and did not notify the DOB and there is an “incident” on the building’s facades, the DOB will “go after” the Owner and Design Professional. The DOB will usually audit only if an incident occurs- but the DOB will exercise “zero tolerance” of incidents.

The Design Professional has an obligation to communicate with the Building Owners that are deficient in performing SWARMP repairs within the timeframes specified in the Local Law 11/98 report.

If the SWARMP timeframes are exceeded, the Design Professional is obligated to re-examine the building facades and file a subsequent report indicating that the conditions have not deteriorated further.

WHAT IS THE MEANING OF SWARMP AND UNSAFE?

SWARMP conditions cannot deteriorate to Unsafe conditions within the 5 year period, or they must be classified as Unsafe.

If a reported SWARMP condition deteriorates into an Unsafe condition and the Design Professional is aware of the problem, it has a responsibility to contact the DOB to report it. The commissioner made it clear that the Design Professional has a fiduciary responsibility to the public.

WHAT IS A RATIONAL WAY TO APPROACH CERTAIN OLDER BUILDING TYPES KNOWN TO HAVE A SYSTEMIC DESIGN AND CONSTRUCTION SHORTCOMINGS?

The DOB recognizes that certain types of building construction (for example, buildings with terra cotta elements, glazed brick, and early versions of brick cavity wall construction) have particular shortcomings that may require a higher degree of investigation (including probes) to determine the underlying conditions as part of the Local Law 11/98 inspection.

It is the obligation of the Design Professional to determine when these further investigations are warranted and to what extent they must be conducted. However, regardless of construction type, the Design Professional has an obligation to determine whether a visible sign of distress represents a systemic condition throughout the facades of the building, including in areas that do not currently show signs of distress. The DOB's logic is that proper diagnosis during a Local Law 11/98 investigation will allow an Owner sufficient notice to plan a multi-year restoration campaign to remedy the deficiencies.

THE LOCAL LAW 11/98 ORDINANCE CURRENTLY STATES:

"The known history of the building, the nature of the materials used and the conditions observed will dictate the extent of the critical examination. The QEWI shall utilize a professional standard of care to assess the building's condition...The QEWI shall order any special or additional inspections and/or tests that may be required to support investigations and to determine the causes of any defects."

The DOB stressed that they do not want to be prescriptive about further investigations. It's always up to the Design Professional to decide how many drops should be performed, and the need, degree and locations for probes, tests or further investigations.

WHAT CAN THE DESIGN PROFESSIONAL DO TO BE MORE PROACTIVE IN THE PROCESS?

The Commissioner encouraged the professional community to "raise the standard" of the industry by publishing case studies on façade problems through SEAONY or other similar respected technical organizations.

The Design Professional should clearly understand the existing construction of the building by reviewing documents related to previous work performed (drawings, reports, permits, etc.).

OTHER MISCELLANEOUS ISSUES DISCUSSED:

A Sidewalk bridge is not required for performing a visual inspection from a scaffold rig. The sidewalk area should be cordoned off and flagman present. It is up to the Design Professional to decide if a sidewalk bridge is required if probes are being performed. No repair work can be performed without a sidewalk bridge.

Interior courtyard walls of a building's fire tower stair are considered part of Local Law 11/98 inspection requirements, because these locations can be accessed by the building's personnel.

MR. RONALD MCCAIN (DIRECTOR OF FACADES) DISTRIBUTED A DRAFT COPY OF FURTHER AMENDMENTS / CLARIFICATIONS TO THE LOCAL LAW 11/98 RULES, WHICH WILL BE READY FOR PUBLIC HEARINGS SOMETIME AROUND JULY 2010. THE DOB WELCOMES COMMENTS THROUGH BOMA-NY AND SEAONY. MCCAIN PREFERS ALL COMMENTS IN RESPONSE TO HIS HANDOUT TO BE WRITTEN TO HIM. HIGHLIGHTS OF THE CURRENTLY PROPOSED REVISIONS / CLARIFICATIONS TO THE RULES:

- The examination shall be conducted under the direct supervision of the QEWI.
- The QEWI must develop an inspection program customized to the specific building.
- To complete the critical examination, the QEWI must conduct a final physical inspection (can be done by walking around with binoculars) to determine that the conditions described in the report are consistent with actual conditions.
- The report must now include the status of repairs of the conditions cited in the ECB violations.
- Certain taller walls on sloped sites may fall under Local Law 11/98, even if the building as a whole does not.
- Scaffold drops inspections that are more than one year old cannot be used to fulfill the “physical” examination requirement in a Local Law 11/98 report.
- A rejected report must be revised and resubmitted within 30 days of the date of rejection.
- A sidewalk bridge needs to remain in place until after an unsafe condition is remedied, the amended report is filed and the DOB has accepted the amended report. A filed amended report will usually take 4 to 8 weeks to be reviewed by DOB.
- The civil penalties and rights to challenge are clarified.

THE NEW LOCAL LAW 11/98 FEE SCHEDULE IS AS FOLLOWS:

\$265	Initial Fee
\$100	Application for Amendment
\$135	Application for Extension of Time to Complete Repairs