

## DOB to Require Supplemental Report on Balconies and Railings for Local Law 11 Cycle 7 Filing

In response to recent balcony accidents, New York City adopted new regulations for Local Law 11 inspection and filing. What many building owners might not realize is that they are at risk of incurring penalties – even if their last report was filed and accepted on time. Here’s how to stay on top of the new requirements.

### Why the Change?

In 2010, New York City building officials undertook widespread evaluation of balcony safety after a man fell to his death when his balcony railing gave way. Inspection teams visited over 500 buildings and closed balcony access at many, focusing primarily on structures for which the owners had not filed required facade safety reports. The Facade Inspection Safety Program (FISP), commonly called “Local Law 11” after the 1998 ordinance, is intended to prevent such casualties, and the City Council launched a campaign to strengthen and better enforce the law.

Then, last summer, a woman died after falling from the balcony of a 17<sup>th</sup>-story apartment, prompting the Council to take urgent action. They voted to amend the FISP to specifically require balcony railing assessment as part of the mandated facade inspections. Rather than wait to implement the change until the next filing cycle begins in 2015, the amended rule requires that owners re-inspect balconies and file a supplementary report before February 2015, even if a facade report for the 2010-2015 cycle was already submitted and accepted by the Department.

### Why Haven’t I Heard about This?

The new requirement for balcony statements comes on the heels of a major overhaul of the Local Law 11 inspection and filing requirements, in 2009. Every five years, owners of buildings over six stories must file an inspection report with the Department of Buildings (DOB), classifying the building as Safe, Unsafe, or Safe with a Repair and Maintenance Program (SWARMP). Each five-year period is a “cycle,” and 2010 marked the start of Cycle 7, for which the City instituted a number of significant changes, among them staggered filing cycles, new penalties, and time frames for SWARMP repairs.

Although filing deadlines for Cycle 7 began as early as February 2010, the Council did not adopt the final version of the law until late December 2010, and many last-minute changes didn’t go into effect until January 2011. In May 2013, the Council amended the rule to include the balcony railing inspection provision. It was



not until September 2013 that the DOB issued a memorandum announcing the change, by which time many building owners had already completed and filed Cycle 7 reports. (The deadline for filing seventh cycle reports expired on 21 February 2013.)

Owners who dutifully completed inspection and filing on time might be surprised to learn that their reports can revert to incomplete status if they do not file a supplemental balcony report, should their building contain balconies. Not until December 2013 did the DOB issue a memorandum clarifying that balcony statements must be filed by *all* owners of six-story-plus buildings with balconies, not just those who failed to specifically document balcony structural soundness as part of the Cycle 7 report.

An important change in the interpretation of the law took place between the September and December DOB memos. In September, the DOB stated that only those buildings for which the filing status would change to Unsafe would be required to submit a supplemental report; by December, the DOB expanded the requirement to include *all* buildings over six stories with balconies, even if filing status stays the same. That means that even an owner who inspected balconies for structural soundness as part of the original Cycle 7 inspection must still re-inspect and submit a supplemental report to the DOB.

### What Does the Law Say?

From the September DOB memorandum regarding changes to the law:

“A recent balcony accident highlighted that many balcony railings are uninspected and may be unsafe. With this rule, the Department specifically requires all owners to check periodically the adequacy and structural integrity of all of their balcony railings.”



From Rules of the City of New York (RCNY) §103-04, amended 17 May 2013:

“Balcony railings must be inspected to ensure that their components (balusters, intermediate railings and panel fillers) are positively secured against upward movement (e.g. by welds, bolts or screws). If any balcony enclosure is found not to be positively secured, the condition is classified as unsafe and must be made safe [...]. In the event a cycle seven report has already been filed with the Department [...], **a separate report regarding the condition of the balcony enclosures must be filed within cycle seven.**”

What the rule does *not* say is when these supplemental reports are due. The December DOB memorandum provides a deadline of **1 February 2015**.

That memo also clarifies and expands the definition of “balconies” to include:

- Terraces,
- Walkways,
- Corridors,
- Fire escapes, and
- Roof and setbacks.

This means that a building *need not have balconies in the traditional sense* to be subject to this new provision of the law. The DOB interprets the directive broadly, to include any areas with railings, even if these railings are at a distance from the edge of the building. To be conservative, owners of buildings with roof walkways, service areas, or anything with a railing should submit a supplemental balcony report.

### What’s Included in a Supplemental Balcony Report?

The statement, which can be in letter format, must be signed and sealed by the inspector and must include the following:

- Building Information Number (BIN),
- Control number,
- Block/lot number,
- Total number of balconies on the building,
- Number of balconies inspected,
- Manner of investigation and testing,
- Location of inspected balconies, and
- Total area and inspected area for terraces, walkways, corridors, fire escapes, roof and setbacks.

The DOB states that the method of testing is at the discretion of the professional, who needs to be able to evaluate not just the

present condition of the railings, but also their design capacity. Depending upon the building’s age and state of repair, this could involve visual observations, structural calculations, load testing, destructive testing, exploratory openings, or a combination of these.

If balcony conditions will downgrade the status of the building (from Safe to SWARMP, or from Safe or SWARMP to Unsafe), the owner must also submit an amended Cycle 7 report. For Unsafe conditions, the appropriate form (FISP3) must be filed with the DOB.

There is no DOB fee for filing the supplemental report, and no penalties. But for buildings with balconies, failure to submit a supplemental report means the original Cycle 7 report reverts to a No Report (NR) status, incurring penalties.

### What Do I Have to Do?

If your building is over six stories, is subject to the FISP (i.e. Local Law 11), and has “balconies,” as defined broadly above, take these steps:

1. **Retain** a Qualified Exterior Wall Inspector (QEWI) or DOB-approved special inspector or testing laboratory, as per FISP requirements.
2. **Conduct** an on-site inspection of a representative sample of balconies, railings, and related appurtenances, as determined by the QEWI.
3. **Test** structural conditions using destructive and non-destructive methods, as determined by the QEWI.
4. **File** a supplemental balcony statement and/or amended Cycle 7 report with the DOB no later than **1 February 2015**.



If your building does not have balconies or handrails/guards, and a seventh cycle report has already been filed and accepted by the DOB, *no supplemental report is required*.

With little less than a year until the deadline, owners need to act quickly to respond to the new requirements for balcony inspection. Although this eleventh-hour change to the FISP may come as an unwelcome surprise, the recent deaths due to balcony railing collapse underscore the need for swift and decisive action to prevent further tragedy. It was in the spirit of civic protection that Local Law 11 (then Local Law 10 of 1980) was first enacted, and it is in this vein that the sudden demands on building owners may be reconciled with their importance to public safety.

*For more information on Balcony Statements and Local Law 11, contact Craig A. Hargrove, AIA LEED AP, Senior Vice President with Hoffmann Architects, or Juan Kuriyama, AIA, Senior Architect, at 212-789-9915 or email [c.hargrove@hoffarch.com](mailto:c.hargrove@hoffarch.com) or [j.kuriyama@hoffarch.com](mailto:j.kuriyama@hoffarch.com).*

*Founded in 1977, Hoffmann Architects specializes in the rehabilitation of the building envelope. The firm’s work focuses on the exteriors of existing structures, diagnosing and resolving deterioration within facades, roofing systems, windows, waterproofing materials, plazas/terraces, parking garages, and historic and landmark structures. Our technical professionals investigate and correct damage resulting from time and weather, substandard or improper construction, design defects, material failures, poor workmanship, structural movement, and stress.*