

TITLE: Site Safety: Overhaul Needed?

DESCRIPTION: Minor work at our co-op has come to a halt because the DOB says we need a site safety plan. Is this necessary?

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AUTHOR: Eric Cowley
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ABSTRACT Eric Cowley offers advice for dealing with an overzealous DOB regulation and discusses potential changes to the policy.

ARTICLE TEXT Site Safety: Overhaul Needed?

I am on the board of a prewar co-op on the Upper West Side. We authorized a contractor to do some minor masonry repairs to stop a leak into a unit on the 16th floor. The apartment has a small terrace, and the work can be performed without the use of rigging. The repairs were minor enough to not require filing with the New York City Department of Buildings (DOB), and amounted to less than \$10,000. However, just after starting the work, we were stopped by a DOB inspector who required us to file a site safety plan. We have been told by the site safety company that because the work is within 20 feet of the street, we need a sidewalk shed. This is crazy! Please explain.

The spirit of the site safety requirement has become corrupted. The code is being misused and requires a complete overhaul. The original intention of the law was to address safety issues on large-scale building projects. But the framers of the law never contemplated the situation that you have just described. In a nutshell, the current law is, in my opinion, punitive, capricious, and overreaching. It should be modified to a tiered system that allows for emergency repairs. Let's examine why you are in this situation.

Sidewalk sheds are required when a portion of a façade more than 40 feet above curb level is being altered or repaired, and the horizontal distance from that portion of the building is equal to, or less than, half the height of the structure being altered or repaired.

But contradictions abound in the code. Section 3310.3 states that a site safety plan and site safety program are necessary when a sidewalk shed is required. A shed is necessary when the job involves a "major building." What is that? The DOB defines a "major building" by its square footage, as well as a height of more than 10 stories. Yet the code exempts buildings between 10 and 14 stories from "major building" status for the purposes of site safety during façade repairs. Contradictory and confusing? Yes. In practice, that means a sidewalk shed is required for work within 20 feet of a public way, irrespective of height. For a building more than 15 stories in height, site safety and a site safety manager are required when a shed is required.

No permit shall be issued for the construction or demolition of a major building, or for the alteration of the façade of a major building, when a sidewalk shed is required, until a site safety plan has been approved by the department. The operative word here is permit. For such minor work, however, a permit from DOB is technically not required, so why are you in this situation?

Fees and Rates

The probable answer: an inspector became overzealous. An appeal could have been made to the DOB commissioner, but it is unlikely that the commissioner would have overruled the inspector. After all, who can argue against safety? Who can fault the inspector for erring on the side of safety?

The fee for preparation of the site safety plan ranges from \$5,000 to \$7,000. The time for the DOB's Buildings Enforcement Safety Team (BEST) to review and approve the plan is a function of how busy the BEST squad unit is – it could be a month, it could be three months. The real cost comes from the staffing requirements on the site. For buildings less than 15 stories, a site safety coordinator is all that is required. This, of course, does not apply to you. Because your building is more than 15 stories, a site safety manager is needed. This professional gets more money than the site safety coordinator; rates can be around \$125 per hour.

But it gets worse.

The current law requires that the site safety manager or coordinator be on-site full time. This requirement for full-time presence can be reduced by applying for a reduction in hours by completing and filing a CCD-1 (Construction Code Determination) form. This must be submitted with an explanation as to the scope of the work and the request for reduction from eight hours (full time) to two hours daily. These reductions in full-time site safety supervision are not automatic and are often denied.

Bills Build Up

So the minor repair that you want to perform – which started out costing \$10,000 for the actual repair – has ballooned. The shed will cost \$7,000 for the minimum required protected sidewalk area, and the preparation of the site safety plan will cost \$6,000. Not to mention the one-to-three-month wait for approval. The additional protection to the neighboring building required by the site safety plan will cost \$10,000. The preparation of an access agreement to place the required protection on the neighboring building's roof may cost \$5,000 in legal fees, and the cost for the site safety manager or coordinator will be \$125 an hour or about \$800 per day from the start of work until the shed is removed. The date the shed is removed is contingent upon contacting the BEST squad after the work is completed. The squad must send out an inspector to verify that the work is completed before any of the safety protection is removed. Otherwise, the building will be issued a violation.

The entire thing is a mess and must be straightened out. But until that happens, we suggest to our clients to bundle as much work as possible so that the economies of scale reach a more reasonable level. By the addition of more work areas to achieve economies of scale, the need for a work permit will become necessary because masonry removal and replacement requires a permit. Now drawings must be prepared by a licensed engineer and submitted to the DOB for approval. Rigging permits will also be required from the Cranes and Derricks Department to access the added work, and the sidewalk shed coverage will have to be increased to provide protection to a bigger area.

We advise our clients to bundle their repairs into areas or “lines.” Until the site safety rule gets changed, this is the best way to keep your problems small and out in front. It also helps amortize the soft costs associated with overzealous government regulations.

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