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## Co-ops and Condos: Update on Balcony Enclosures and Rooftop Use



By [Eva C. Talei](#)

**Cooperatives and Condominiums columnist Eva Talei discusses updated information on balcony enclosures and rooftop use.**

This column features an important policy clarification regarding Local Law 11 inspections of balcony enclosures and updated guidelines regarding building rooftop and terrace uses by apartment owners—both, recently issued by the New York City Department of Buildings (DOB). This column also makes recommendations to boards, managers and owners regarding how to best navigate DOB’s clarified policy and rooftop use guidelines.

### ***DOB Balcony Enclosure Policies***

In my May 2, 2018, column, [“Balcony Enclosures—Challenges Facing Co-ops, Condominiums and Owners,”](#) (New York Law Journal May 3, 2018, pg. 3, col. 1), I highlighted a new policy adopted by the DOB—imposing a strict deadline by which time balcony enclosures must either be legalized (i.e., DOB permits issued), or removed. Failing to do so could result in a building’s inability to timely file a “safe” or SWARM LL11 inspection report with the DOB. The dilemma for buildings was not only one of time (given the DOB’s LL11 Cycle 9 deadline, there would likely be insufficient time to legalize/permit or remove balcony enclosures, so that “safe” inspection

reports could not be timely filed), but substantive—many buildings simply lack sufficient FAR (available building space) for enclosed balconies to be legalized.

The column (and other groups and individuals) recommended various solutions to ameliorate the adverse consequences of the DOB’s policy, and I am pleased to report that some of these have been adopted by the DOB.

### ***DOB June Clarification***

In June, the DOB issued a draft “Code Note,” part of a series of DOB publications which provide a general overview of DOB project requirements for the construction industry: “Façade and Balcony Inspections, Clarification of Façade Inspection and Safety Program (FISP) [commonly known as Local Law 11] and Department Requirements” (the clarification).

The clarification establishes that while all balcony enclosures must be inspected by a qualified exterior wall inspector (QEWI) for conformance with Local Law 11, and that balcony enclosures must be maintained in a safe condition, the DOB will no longer require that the enclosure be permitted or legalized in order for the building to be certified as “safe” or SWARMP. Instead, the “QEWI’s report of Local Law 11 compliance is limited to safety, condition and structural stability of the balcony enclosure. Any balcony enclosure found to be “structurally unstable” requires the building owner/co-op or condominium to so notify the DOB and commence repairs “to make the enclosure safe.”

Accordingly, the clarification provides immediate relief to buildings with balcony enclosures with regard to timely and complete Local Law 11 compliance. However, it does not address the thorny underlying question: legalization/permitting or removal of balcony enclosures.

### ***Using Rooftops and Terraces***

As spring and summer season finally arrive in New York City, buildings and apartment owners focus their attention on their outdoor spaces—an important and popular amenity for city dwellers.

In March, the DOB issued a bulletin to provide guidance regarding the New York City Building Code (the code), zoning and DOB filing requirements for rooftops or terraces that are to be occupied “as amenities for the passive enjoyment of the occupants of the building and typically do not involve excessive noise, vibration [or] other nuisances.”—such as “rooftop gardens or green roofs.” (Buildings Bulletin 2018-2 Technical, March 14, 2018, available at [https://www1.nyc.gov/assets/buildings/bldgs\\_bulletins/bb\\_2018-002.pdf](https://www1.nyc.gov/assets/buildings/bldgs_bulletins/bb_2018-002.pdf)).

### ***The Code***

Rooftops and terraces which are open for use by building occupants must be designed in accordance with code. Special consideration should be given to egress issues (occupant loads, number of exits, travel distances, egress widths, lighting, and the like) and other safety requirements such as parapet and guardrail heights.

### ***NYC Zoning Resolution***

Rooftops and terraces must also comply with the applicable provisions of the NYC Zoning Resolution. Generally, depending on the zoning district within which a building is located, where such spaces are not enclosed and used as a passive recreation accessory to a principal use of the building (i.e., for residences), this would not result in FAR being required for the use to be lawful. Further, paving materials, other walking surfaces and vegetated roofs added onto the finished level of such rooftop or terrace are considered permitted obstructions provided that they do not exceed prescribed heights. However, enclosed rooftop greenhouses would require FAR in order to be lawful.

### ***DOB Filings in Existing Buildings***

Where an existing residential building proposes to convert a rooftop or terrace to an amenity for the building's occupants, such conversion will generally be allowed by DOB without requiring a new or amended Certificate of Occupancy, provided that: the maximum number of occupants complies with the code so that no Public Assembly Permit is required; such conversion does not require an increase in the number of required exits; and no structural alterations are required to increase the rooftop/terrace's live load capacity as stated in the building's existing Certificate of Occupancy. For such a conversion, additional code requirements regarding occupants permitted per stairway, structural loads, means of egress and accessibility, exist signs and lighting requirements must be determined and complied with.

Last, pursuant to the code, the design and configuration of rooftop occupancy is subject to the New York City Fire Code (the fire code). Section 504 of the Fire Code—Building and Rooftop Access (Available at <https://www1.nyc.gov/site/fdny/about/resources/code-and-rules/nyc-fire-code.page>) provides for, among other things, stairway and other access to roofs, permitted obstructions, clear path protection, exit and rooftop clearances, and the like. Compliance with the fire code is an often overlooked aspect of lawful rooftop development which should not be overlooked by boards and managers when developing a rooftop amenity for their buildings.

It is recommended that boards and managers which are considering creating or improving rooftop amenities for the use of the building's occupants, should consult with the appropriate

professionals for guidance regarding all code, zoning, DOB filings and fire code requirements before designing/commencing a project.

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